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CURRENT TOPICS

Trade Union an "Entity"

Bonsor v. *Musicians' Union* (*The Times*, 8th November) is an obviously historic decision. Besides reversing a decision of forty years ago (*Kelly* v. *National Society of Operative Printers' Assistants* (1915), 31 T.L.R. 632) to the effect that a trade union is not liable in damages to one of its members for wrongful expulsion, it also asserts that, *qua* this cause of action at any rate, a trade union must be regarded as a separate entity in law and not as a mere collection of individuals. LORD MORTON OF HENRYTON said that *Taff Vale Railway Co.* v. *Amalgamated Society of Railway Servants* [1901] A.C. 426 went far towards deciding the case, and *Osborne* v. *Amalgamated Society of Railway Servants* [1911] 1 Ch. 540, approved by the Lords in *Amalgamated Society of Carpenters, etc.* v. *Braithwaite* [1922] 2 A.C. 440, carried the matter a stage further. He held that the union, though not an incorporated body, could enter into contracts and be sued as an "entity." LORD PORTER thought that there was "a thing created by statute—call it what you would, an entity a body, a near corporation—which, by statute, had in certain respects an existence apart from its members." LORD MACDERMOTT agreed, but gave his opinion that a trade union was not a juridical person. The Legislature, though minded to bestow on registered unions some of the gifts and attributes of legal personality, had no intention of doing more. LORD SOMERVELL took a similar view, and LORD KEITH formed the view that it could be called a legal entity. The upshot appears to be that a member wrongfully expelled from his union now has his full remedy. Whether any further political or juridical consequences will flow from the decision remains to be seen.

Affiliation Orders: Limitations of Time

IT is well known that some important conditions precedent have to be satisfied before a woman can obtain an order by magistrates under s. 3 of the Bastardy Laws Amendment Act, 1872, affiliating her child to its putative father and directing the payment of maintenance for it. She must be a single woman within the meaning of the Act (and that is not at all the common or dictionary meaning of that expression), and she must make her application not later than twelve months from the birth of the child or from the return to England of the alleged father if he ceased to live here during the child's first year of age. This temporal condition is waived on proof that the respondent has within that first year paid money for its maintenance. But affiliation proceedings do not lie only at the instance of the child's mother. An Act of 1873 made them available to poor-law authorities on whom the child had become chargeable without any such limitation of time as applied in the case of an application by the mother. Section 44 (2) of the National

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Assistance Act, 1948, is the provision now in point. That subsection enables the National Assistance Board, or a local authority which has given assistance or provided accommodation for the child, to apply (if no affiliation order is in force) "for a summons to be served under s. 3 of the Bastardy Laws Amendment Act, 1872." This course is open to the Board for three years from the time when the assistance or accommodation is given or provided, and the result of the recent case of *National Assistance Board* v. *Mitchell* [1955] 3 W.L.R. 591; *ante*, p. 781, may be indicated by saying that this time limit operates in replacement of the temporal part of the conditions applicable on a mother's application. Section 44 (2) creates, as the court said, a wholly independent right vested in the Board. It seems clear from LORD GODDARD'S judgment that the Board (and the same is no doubt true of a local authority applying either under s. 44 (2) or under the similar provision in s. 26 (1) of the Children Act, 1948) must show that the child is one in respect of whom an order under the 1872 Act could be made, that is, that it is the bastard child of a single woman. What must be ignored in that Act is the time limit imposed on the mother, the necessity for showing maintenance payments during the first twelve months being regarded merely as part of that time limit, and not appropriate to summons by the Board.

Lawyers in the House

THE debate on the second reading on 9th November of the House of Commons Disqualification Bill, which clarifies the law relating to the disqualification for membership of the House of Commons of persons holding offices of profit under the Crown, brought out some interesting points of view about the connection between the law and the Commons. Mr. MITCHISON said that one aspect which troubled him was that it was a serious objection about Crown briefs that they constituted a form of secret or semi-secret patronage. It was the Minister's responsibility, he said, to find the best advocate for the Crown in any kind of case. He was expected to discharge the duty impartially. Mr. RONALD BELL, on the other hand, did not think that there was any suspicion at all among his professional colleagues that there was an element of patronage in the Attorney-General's briefs. Mr. JOHN PARKER then said that there were too many lawyers and journalists in the House and, while he would not ban them, there would be fewer if it were easier for other people to stand for election. Mr. EDE held that the practice by members of accepting Crown briefs should be ended. Mr. DE FREITAS said that lawyers must be attracted to the House or gradually the standard of law officers would fall. In reply, the ATTORNEY-GENERAL said that there had not been any serious criticism of the way the system of giving briefs had been worked at the Bar. His governing consideration was to try to make the fairest distribution. M.P.s should not be excluded, and it was nonsensical to say that a barrister M.P. would be influenced in his conduct in the House by a Treasury nomination. A new rule to disqualify M.P.s from receipt of such briefs might handicap the public services.

Value of a Practice

A COUNTRY solicitor's inquiry as to the goodwill value of a practice is dealt with in a short article in the 1st October issue of the *Law Institute Journal*, published by the Law Institute of Victoria and the Queensland Law Society Incorporated. The gist of the information given is that "it may be said that a practice which is predominantly handling probate and conveyancing matters is likely to be worth substantially more than one which is predominantly engaged in common-law work and that a practice which is purely personal to the vendor is not an attractive investment for someone other than the vendor. Moreover, a share in a partnership where the vendor will continue in the practice is likely to be worth more than it would be if he were retiring entirely. Again, it is probable that a country practice is worth more than a city practice earning the same profits." The journal invited views on the matter, as "a general acceptance of a basis of valuation could be a very helpful guide." "Advice to a Young Solicitor," by H. O. LOCK, solicitor (Stevens & Sons, Ltd., 1946), states that the price to be paid for a practice depends on the class of practice and the nature of the business transacted, "and whether you will get any, or any adequate, introduction." "With a well established practice, and a full introduction," it adds, "you will probably have to pay from two to three years' purchase." This is probably as good a guide as any, and we respectfully tender it to our contemporary.

EXECUTOR'S DUTY TO DISCLOSE LEGACY

EARLY in October Havers, J., gave judgment in the case of *Hawksley* v. *May* [1955] 3 W.L.R. 569; *ante*, p. 781, in which he had, *inter alia*, to determine whether or not the trustees of a settlement were (*a*) under a duty to inform the beneficiaries of their interest thereunder, and (*b*) under a duty to pay the income due to the beneficiaries under the settlement as and when they became entitled thereto without any demand made by the beneficiaries. He answered both these questions affirmatively and, it is respectfully suggested, rightly.

In the course of his judgment the learned judge considered the same questions in relation to executors, and at p. 581 he says: "So far as an executor is concerned, I am bound by the decision of the Court of Appeal in *Re Lewis* [1904] 2 Ch. 656 to hold that there is no legal duty upon him to give notice of the terms of the legacy to the legatee."

Kekewich, J., in *Re Mackay* [1906] 1 Ch. 25, at pp. 32–3 (whose judgment on the effect of *Re Lewis* is extensively quoted by Havers, J., at pp. 579–80), appears to have taken the view that *Re Lewis* held that an executor was under no obligation to disclose the fact of the legacy, a view which he seemed to think was right, for "I see very great difficulty in saying that an executor is bound to give notice to a legatee or to anyone else who is entitled to claim against the estate of the benefits conferred upon him by the will—I mean bound in the sense that any consequences follow from his not performing the obligation."

If that were the law it would follow that an unscrupulous executor might be able to retain a legacy unpaid almost indefinitely. To take but two examples: suppose a husband who is separated from his wife is appointed executor under a will by a testator who has given a legacy to the wife. If the wife does not know of the testator's death, or of the legacy, she may never claim it, and the benefit will not be passed to her, at any rate not until the estate has been fully administered, and the executor holds the legacy as trustee for the legatee and, therefore, on the authority of *Hawksley* v. *May* is bound to disclose and pay it to the legatee even though it be not demanded.

Then, too, other considerations apart, how is a charity to know of any benefit left to it under a will before completion of administration, which may, for good or bad reasons, be delayed for a long time? If the executor is silent the charity is left to find out by such means as are available to it. If that were the law, it would play into the hands of an unscrupulous executor.

This, then, is the position: on the one hand a Chancery judge has taken the view that *Re Lewis* held that an executor is not bound to disclose the fact of the legacy at all, and on the other hand a common-law judge quotes that case as authority for the proposition that there was no legal duty upon an executor to give notice "of the terms of the legacy to the legatee." Which view should be preferred? Certainly the latter proposition does not assist the unscrupulous executor, because once the legatee is apprised of the legacy he has means of discovering its terms, if not from the executor himself, at any rate from Somerset House.

The material facts of *Re Lewis* are set out in the headnote as follows: "A testatrix appointed her son *A* her executor and bequeathed a leasehold house to her son, *B*, then abroad, and directed that in case he should not return and claim it it should go to *A*. After the death of the testatrix *A* wrote to *B*: 'A house has been left you and according to the will it is to be in my hands until you claim it'; but he did not inform him of the gift over. *B* died abroad without having claimed the house."

These facts suggest the immediate comment that in *Re Lewis* the executor had disclosed the fact of the legacy to the legatee, but had not disclosed its terms. It is interesting, then, to look more closely at the judgments. In these one will find frequent remarks such as these, which are extracted from Vaughan Williams, L.J.'s judgment, beginning at p. 661. He mentions that counsel for the appellant had to start by an admission "that *prima facie* there was no duty on the executor to disclose." Further down his judgment he repeats: "We have got thus far—that there is no duty on the executor to disclose." Still further down he says: "It is said, however, that, though generally there is no duty on the executor, yet in this particular case there is a duty, because, etc.," and later he considers the case of *Chauncy* v. *Graydon* (1743), 2 Atk. 616. Finally, the learned judge says: "It seems to me we must start with the assumption that there is no duty to give notice imposed on the executor either by the general law or by the special provisions of the will." At p. 664, Cozens-Hardy, L.J., says that "it is plain that there is no *prima facie* duty resting on an executor to give notice." In each case the judges refer to the "giving of notice" and to "disclosing" without specifically saying what: giving notice of or disclosing the existence of the legacy or the terms of the legacy? Kekewich, J., thought that the judges were referring to the duty to disclose the fact of the legacy, but Havers, J., after quoting Kekewich, J., took the view that *Re Lewis* only held that there was no duty to disclose the terms of the legacy.

The argument which is suggested here, and suggested, let it be said, with great respect to Kekewich, J., is that all that was held in *Re Lewis* was that there was no duty placed on an executor to disclose to the legatee the terms on which the latter took the legacy, and that even if the court held that there was no duty to disclose the legacy itself, such a holding was clearly *obiter* and, therefore, should not be binding on any judge.

This argument cannot be said to be supported, but it is at any rate suggested, by the first sentence in the headnote, which is as follows: "Where a legacy is given upon a condition, an executor who takes a beneficial interest in the legacy on the breach of the condition owes no duty to the legatee to give notice *of the terms* of the legacy" (author's italics). In their judgments the lords justices were dealing with the arguments which had been addressed to them by counsel for the appellant. A reading of his argument will show that he was not contending that there was a duty on an executor to disclose the legacy *simpliciter*. The legacy had been disclosed. Counsel was contending, *inter alia*, that there was a duty to disclose its terms. Thus he is reported to have argued (p. 660): "It is the duty of an executor who takes a benefit under a gift to communicate the fact to the legatee, otherwise he cannot accept the benefit." Surely, "to communicate the fact" here refers to the fact of the benefit, not of the gift which had been communicated. "No doubt an executor is not bound to give notice to a legatee as to the terms of the legacy unless the executor takes a benefit under it." There is no doubt here that counsel is dealing with the terms of the legacy. If this is a right understanding of counsel's argument, then each time the lords justices refer to "notice" in their judgments, they are referring to notice of the terms of the legacy (the issue before them), and not to notice of the legacy itself, a matter they did not have to decide. The word "notice" was being used by the court in the context of the case, and more particularly of counsel's argument. Vaughan Williams, L.J., specifically refers to counsel's argument, and this quotation from Romer, L.J., at p. 663, shows that he too was dealing with the argument put to him by counsel: "I cannot see any sufficient reason for holding that such a duty is cast on the defendant *as is contended for here*" (author's italics).

Such a view explains the reference to the case of *Chauncy* v. *Graydon* (1743), 2 Atk. 616, a case where the court had to decide whether or not there was a duty to give notice of a condition of the devise, and not whether or not there was a duty to give notice of the devise itself. In that case too, when Hardwicke, L.C., refers to "notice," he is using the word in its sense restricted by the context to the condition.

But even if the argument put forward here and the conclusion expressed by Havers, J., do not find favour, there can surely be no doubt that *Re Lewis* is not authority for the proposition that an executor is not bound to disclose the fact of the legacy. On the footing that the judgments in *Re Lewis* all dealt with the executor's obligation to give notice of the legacy, they were all *obiter*, for there the executor had given notice of the legacy. If *Re Lewis* decided what Kekewich, J., thought it decided then it was deciding what it was not being called on to decide. Let it be said, too, that Kekewich, J.'s remarks in *Re Mackay* were also *obiter*, because he held as a fact that the legatee had notice of the legacy. Finally it is only fair to say that Havers, J.'s views on the effect of *Re Lewis*, although of the greatest possible authority, are also only *obiter*, for he had to decide what were the duties of trustees, and not of executors.

Will *Hawksley* v. *May*, by raising this question of an executor's duties, throw the whole matter into the arena of controversy? Is it doubted than an executor is as much bound to disclose to the legatee the fact of the legacy as a trustee is to disclose to the *cestui que* trust the existence of the trust? Certainly if *Re Lewis* means what Kekewich, J., said it meant, and not what Havers, J., felt himself bound to accept it meant, then there may be a case for the introduction of a short Bill into Parliament in order to rectify, or at any rate, clarify the position.

J. H. H.

A Conveyancer's Diary

INHERITANCE ACT: DECEASED'S OBLIGATION TO DEPENDANT

THE key word in the Inheritance (Family Provision) Act, 1938, is "reasonable." In its present form, as amended by the Intestates' Estates Act, 1952, to include within its scope cases of intestacy, total or partial, as well as cases of testamentary disposition, s. 1 (1) of the Act provides that if the court, on application by a dependant as therein defined, is of opinion that the disposition of the deceased's estate effected by his will or by the law relating to intestacy or by the combination of both the will and that law is not such as to make reasonable provision for the maintenance of that dependant, the court may order that such reasonable provision as the court thinks fit shall be made out of the deceased's estate for the maintenance of that dependant.

The application of this provision to any given case involves the consideration of more than one question. First there is the question whether the applicant is a dependant within the meaning of the Act. In the ordinary case this is a purely mechanical problem, but difficult questions of fact and law can sometimes arise in establishing that a person bears the right degree of relationship to the deceased—see, e.g., *Re Watkins* [1953] 1 W.L.R. 1323; 97 SOL. J. 762. Secondly, there is the question (not uncommonly, although perhaps not very accurately, referred to as a question of jurisdiction) whether the facts establish that the case is one in which the court should interfere with the deceased's disposition of his estate in favour of the applicant at all. If the applicant can satisfy the court on both these questions, the third question arises: what is the amount of maintenance which should be ordered out of the estate to produce the result that the applicant shall receive reasonable maintenance thereout?

Because these last two questions involve the application of the same test, viz., reasonableness, there is sometimes a tendency to regard them as one question, or two aspects of the same question. But this is not how the courts have regarded the requirements of s. 1 (1) of the Act, as appears quite clearly from what has become the *locus classicus* on this point, the judgment of Morton, J. (as he then was), in *Re Pugh* [1943] Ch. 387. The learned judge there said this (p. 395): "If I had been sitting in the testator's armchair I should have made slightly more provision for the widow than the testator made, but I cannot conclude that the will did not make reasonable provision for the maintenance of the widow within s. 1 (1) of the Act. As I pointed out in *Re Styler* [1942] Ch. 387, at pp. 388–9, quoting the judgment of Bennett, J., in *Re Brownridge* (1942), 193 L.T. News. 185, the Act gives the court the right to interfere only if it concludes that the dispositions which were made were unwarranted, and I proceeded to say: 'I do not think that a judge should interfere with a testator's dispositions merely because he thinks that he would have been inclined, if he had been in the position of the testator, to make provision for some particular person. I think that the court has to find that it was unreasonable on the part of the testator to make no provision for the person in question or that it was unreasonable not to make a larger provision'." Morton, J., then went on to say that he could not arrive at that conclusion in the case before him, where the testator had left his farm, valued at £5,000, to a nephew (whose father had, it appeared, contributed to its prosperity) and the residue of his estate, valued at about £1,800, to his widow the applicant, to whom he had been married for only a comparatively short time.

There is a decision very similar in essentials to this in the recently reported case of *Re Andrews* [1955] 1 W.L.R. 1105, and p. 727, *ante*. The applicant was the daughter of the testator, to whom the testator had given nothing by his will. She had left the parental home many years before the testator's death to live as the wife of a married man. The departure from home in these circumstances had led to a rupture between herself and the testator, but they had subsequently become to some extent reconciled. She claimed to be a dependant within s. 1 (1) as an unmarried daughter incapable, by reason of physical disability, of maintaining herself.

Wynn Parry, J., started his judgment by observing that before the passing of the Act of 1938 a testator had under English law an unqualified right to dispose of his property by will, and unless his disposition was so capricious as to lead to the conclusion that he could not be treated as being of sound testamentary capacity, there were no means of qualifying or in any way frustrating the provisions of his will. The Act of 1938, as since amended, constituted an invasion of that unqualified right of disposition, and it was, therefore, but natural that in exercising the jurisdiction conferred upon them by the Act the courts had on numerous occasions been careful to point out that the jurisdiction was one which should be exercised with great circumspection and only to a limited extent. It was clear, the learned judge went on, partly from the decided cases and partly from a perusal of s. 1 of the Act, that a most important, if not the most important, consideration which the court should have in mind was the extent to which, if at all, the testator was under a moral obligation to the person claiming relief.

From this statement of general principles Wynn Parry, J., went on to consider the facts of the particular case. The plaintiff had not been married and she was, therefore, on the strict words of s. 1 (1) of the Act, a person entitled to bring an application. According to the evidence she was suffering from physical disability and was incapable of maintaining herself, and therefore, on an equally strict reading of s. 1 (1), she was for that reason also in a position to invoke the jurisdiction of the court; but she could not be successful in an application based on either of the two grounds in sub-para. (*b*) of s. 1 (1) unless it was demonstrated that in all the circumstances the testator was under some moral obligation to her, with the result that by excluding her entirely from his will, as the testator had done in the case before the court, he had failed to make reasonable provision for her maintenance. By that test the application failed. The plaintiff had left the parental home to set up a permanent home with the man with whom she had thereafter lived, no doubt relying upon him to provide her with companionship and the protection, financial and otherwise, which she would have had a right to expect from him if they could have been and had been joined in wedlock. It necessarily followed, in the learned judge's view, that from that time, notwithstanding that she was not legally married, her father ceased to have any moral obligation with regard to her maintenance and he ceased to have any moral obligation to provide for her by his will.

This is, I think, the first reported case in which the test of reasonableness, in relation to the question whether the disposition of the deceased's estate should be interfered with at all, has been put in terms of moral obligation. This expression was doubtless used in the judgment in this case

as it is used by the man in the street, in contrast to legal obligation, and as to legal obligation in these cases the learned judge's observations on the law as it stood before the Act of 1938 came into force make it clear that there is none; a testator can still leave his wife penniless so far as his will is concerned, subject only to her rights of applying for maintenance under the Act. The expression brings out in a particularly forceful way the relative unimportance in these cases of the status of dependency as a matter of law, and its importance as a matter of fact. The fact that the applicant is (to take the strongest possible case of all those provided for by s. 1 (1)) the widow of the deceased is of course important in that it opens the door to the possibility of a successful application under the Act, a possibility which is wholly denied to a surviving mistress. But the establishment of that fact merely opens the door; it does nothing to ensure that the applicant, once she has passed through, will be received with any warmth. Success lies in establishing that the deceased's disposition of his estate so far as the applicant is concerned was (in the words of Bennett, J., in *Re Brownridge*) "unwarranted," and to give that rather difficult word colour we now have (as I think) the means to say that the disposition was unwarranted if its consequence, or one of its consequences, is a breach of a moral obligation. This is a much easier concept to keep before one's mind than that of unreasonableness or unwarrantedness, particularly in the very common case under this Act of an application by the surviving party to a marriage which broke up through incompatibility many years before the death. The judgment in *Re Andrews* is a welcome one, for its general observations, and one may hope that its present designation as a "starred" case in the *Weekly Law Reports* will not preclude the editors of the *Law Reports* from giving it a more permanent home in the *Law Reports* themselves.

"A B C"

Landlord and Tenant Notebook

CONTROL: COUNCIL HOUSE AS ALTERNATIVE ACCOMMODATION

THE point examined in *Sills* v. *Watkins* [1955] 3 W.L.R. 520 (C.A.); *ante*, p. 761, was a short one, but is provocative of thought on other points. The plaintiff, a butcher, carried on business on the ground floor of a house which he had bought in 1953; a rent-controlled flat above was then already tenanted by the defendant, a schoolmaster. The plaintiff wanted the flat for occupation as a residence (it is a strange thing that the same issue of the *Weekly Law Reports* shows to what different uses the space above a butcher's shop may be put. The defendant in *Atkinson* v. *Bettison* [1955] 1 W.L.R. 1127; *ante*, p. 761, used two upper floors "merely for storage purposes"). Having become the landlord by purchasing the dwelling-house after 1st September, 1939, the plaintiff was unable to advance the "reasonably required" ground of para. (*h*) of Sched. I to the Rent, etc., Restrictions (Amendment) Act, 1933, and none of the other grounds set out in that Schedule met the case. But he was tenant of a "council house" in an adjoining district; its council intimated that it would be prepared to facilitate an exchange; the plaintiff accordingly sought to rely on the second condition resolutive in s. 3 (1) of the Act: "(*b*) the court is satisfied that suitable alternative accommodation is available for the tenant or will be available for him when the order or judgment takes effect."

The "alternative accommodation" ground has certain attractions; "there is a fundamental difference in the Act between an application for possession where no alternative accommodation is offered and an application where it is offered . . . In my view, the measure of reasonableness to be established by the landlord is much smaller in regard to the burden of proof in the case where alternative accommodation is offered than where it is not offered . . .", Scott, L.J., said in *Cumming* v. *Danson* (1942), 112 L.J.K.B. 145 (C.A.); and while other decisions, notably *Warren* v. *Austen* [1947] 2 All E.R. 185 (C.A.), have shown that "fundamental" perhaps rather exaggerates the difference, the last-mentioned authority also contains a useful passage in the judgment of Asquith, L.J., useful when one has occasion to explain to a tenant that he is not "entitled" to an exact replica of the premises claimed. The judge, it was pointed out, has not just to compare the two sets of premises.

Section 3 (3) stipulates that in the absence of a certificate under subs. (2) (to be discussed presently) the accommodation must either be similar as regards rental and extent to the accommodation afforded by a council house for persons whose needs are similar to the tenant's, or be otherwise reasonably suitable to the means of the tenant, etc.; and what Asquith, L.J., was saying about character would apply to rent. The defendant in *Sills* v. *Watkins* would have had to pay 6s. 10d. a week more for the council house than he was paying for the flat but it was suitable to his means and no defence could be based on that feature.

The certificate referred to in subs. (2), when available, places a trump card in the landlord's hand. "A certificate of the housing authority for the area in which the said dwelling-house is situated, certifying that the authority will provide suitable alternative accommodation for the tenant by a date specified in the certificate, shall be conclusive evidence that suitable alternative accommodation will be available for him by that date." The "said dwelling-house" is the one of which possession is claimed; in *Sills* v. *Watkins*, the one available was not in the same housing authority area; consequently, the plaintiff had to rely on subs. (3).

And, apart from the requirements of suitability to means and needs, that subsection insists that the accommodation shall consist "either (*a*) of a dwelling-house to which the principal Acts apply or (*b*) of premises to be let as a separate dwelling to be let on terms which will, in the opinion of the court, afford to the tenant security of tenure reasonably equivalent to the security afforded by the principal Acts in the case of a dwelling-house to which those Acts apply." The "alternative accommodation" ground has, as I observed, many attractions; but it may in some respects be compared to the defence of an alibi in a criminal cause or matter. It is not just that the word means, aptly enough, "elsewhere" in each case, or that either the returning to or recovery of a home may be at stake; it has been said that an alibi is the best possible defence—but that once it breaks down the position is hopeless. And, the proffered council house being exempted from control (by virtue of the Housing Repairs and Rents Act, 1954, s. 33, if not before that Act was passed and became law), the plaintiff was unable to satisfy the security of tenure requirement. "The terms of letting do not provide for any security at all. It is an ordinary weekly tenancy, and the council can evict the tenant at a week's notice if they please.

In practice the local authority do not take such a stringent course except in the case of a tenant who does not pay his rent or behave properly. Nevertheless, the terms of the tenancy do not give security," said Denning, L.J.

Denning, L.J.'s observations harmonise with those made by Greene, M.R., on the differences between public and private landlords, in the course of his judgment in *Shelley* v. *London County Council* [1948] 1 K.B. 274; and one can perhaps appreciate that justice underlies the principle that a local authority's first duty is towards its own people, or at all events that its knowledge of what is suitable for strangers is less than its knowledge of those who inhabit its own district, and that this accounts for the " area in which the said dwelling-house is situated " limitation. But the decision may make one wonder, what is the value of a certificate to a tenant who moves to a council house to which it relates?

The section, it may be noted, authorises a court to make an order for possession, i.e., when satisfied that the accommodation will be available when the order takes effect. This in itself is a little out of the way; evidence can be given only of what has happened, and the court is asked to embark on prognostication. (Much the same applies to a certificate that the authors " will " provide, etc.) The wide powers of suspension and revocation (last illustrated by *Haymills Houses, Ltd.* v. *Blake* [1955] 1 W.L.R. 237 (C.A.); see p. 198, *ante*) could be invoked to save the situation if there should be some slip while the cup was on its way. But if a tenant has moved into a council house after the issue of a s. 3 (2) certificate, it does not seem that he would have any defence to a claim for possession based on an " ordinary " notice to quit.

R. B.

HERE AND THERE

THE AXE

" Lizzie Borden with an axe
Hit her mother forty whacks.
When she saw what she had done
She hit her father forty-one."

Everybody in the United States knows that unforgettable quatrain, which little children chant at their play, for it is the very stuff of which nursery rhymes are made. Even over here it is fairly familiar, but not very many people could give the lady her authentic dates. Now that the Royal Court Theatre has just put on a play about her, a *mise au point* may not be out of place. It was in 1892 that her father and step-mother were found hacked to death with an axe at their house at Fall River, Massachusetts. She was arrested on the 11th August, a week after the crime. She was tried for murder in the following June before Mr. Justice Dewey and acquitted. She died at Fall River on the 1st June, 1927, leaving $30,000 to the Animal Rescue League. The case for the prosecution was purely circumstantial and the jury's verdict is to this day a matter of controversy. Lizzie's father had gone out at about a quarter past nine in the morning, leaving his wife, his daughter and the servant Bridget alone in the house. Mrs. Borden told Bridget to clean the downstairs windows and herself went upstairs to change the pillow-cases. While she was up there she was killed. Mr. Borden came home at about a quarter to eleven, glanced at his newspaper and settled down on the sofa for a nap. While he was there he too was killed. Just after eleven Lizzie shouted to Bridget, who had meanwhile gone up to her room, " Come down quick! Father's dead. Somebody has come in and killed him." Later on, Mrs. Borden's body was found. There were no bloodstains on Lizzie's clothes. The fatal axe could not be found. There was some inconclusive evidence about the possible presence on the premises of an unknown man. The prosecution said that Lizzie's general behaviour indicated guilt; the defence said that it indicated innocence. Directed by the judge that to convict they must be convinced " beyond reasonable doubt," the jury acquitted. There is one final enigmatic postscript to the case. In September, 1949, a carpenter working in the Borden home found an old dust-covered axe behind a false wall in a chimney recess.

DANGER SPOT

EVEN in England at the present day it is actuarily somewhat more improbable that one will be battered to death in one's home than that one will win the big money in a football pool—a comforting reflection. Nevertheless, home is a very dangerous place. There's no place like it for hidden perils, and the statisticians tell us that fatal injuries there are more numerous even than on the mechanised battleground of the roads of Britain. Those cubic compartments in the confined space of which we live so precariously are filled with lethal agents: gas to stifle us, electricity to shock us, baths to drown us, boiling water to scald us, fires to burn those of us who are wealthy enough to afford a little coal, knives and other sharp-edged instruments to gash us, windows to guillotine us, staircases to carry us up to tree-top level with danger in every direction, bottles in the medicine cupboard to get mixed up and poison us. It's a wonder any of us dare go home at all. In the midst of life we are in death. It is so even if one lives alone and has only the well-known malice of inanimate objects to contend with. But bring in animate objects, one's nearest and dearest and one's domestic pets, and only the most hypocritical or the most unimaginative would pretend to seek for perilous adventure in mountaineering or under-water exploration when the resources of the home are so much more than adequate to satisfy that craving.

PERILOUS CALLING

THESE elementary and, indeed, obvious facts of common experience have recently received judicial recognition in the United States, where it has just been held that baby-sitting is a dangerous occupation. Little Salvatore d'Angelo was five years old, but, close as he was in age to his heavenly origins (see Wordsworth), Pope Gregory's celebrated pun would have been singularly inappropriate if applied to him. His mother, going out for the evening, hired an unsuspecting girl to look after him. The little boy put his head down, charged her like a battering ram and knocked her flying. It was his favourite form of play and he had already done it to a long succession of previous baby-sitters, who had never come back. This one, in falling, broke her wrists and brought an action for damages against the mother. She obtained a judgment which has been upheld by the California Appeals Court. There would be a great deal to be said for the argument that a child is an animal *ferae naturae*. People who have trained both animals and children say that, whereas animals once trained stay trained, children never do. Everyone knows how bloodthirsty small children are. It takes no " horror comics " to make them so. From Stone Age instincts and habits the small child moves on to the smashing, raiding instincts of the Viking pirates of the Dark Ages. (" Smashing " is for him

a eulogistic epithet.) Some eventually grow into more civilised instincts; others never do. Had children been frankly recognised as wild animals, the baby-sitter could hardly have succeeded in her action any more than if she had accepted temporary employment in the lion house at the Zoo. But the decision of the court seems to have proceeded on the basis that little Salvatore was an animal *domitae naturae* and that the doctrine of *scienter* applied. His mother knew that he was a "butter." She had not warned the plaintiff of this propensity and accordingly she was liable for the resulting damage. Belloc could have made an excellent Cautionary Tale out of all this.

RICHARD ROE.

CORRESPONDENCE

[The views expressed by our correspondents are not necessarily those of THE SOLICITORS' JOURNAL*]*

Advancing the Profession

Sir,—Mr. Newsome, whose letter you publish in your issue of 5th November, is to be congratulated upon having made some constructive proposals about matters to which the Council of The Law Society might give their attention. Criticism, whether of the Society or otherwise, is all too often purely destructive.

Had Mr. Newsome sent his suggestions direct to me or raised them with the members of the Council elected for his own constituency, he would no doubt have been interested to learn that, with "one and a half" exceptions (which I will mention later), all the "practical objectives" to which he refers and a good many others are either presently engaging the attention of the Council or have recently engaged their attention.

He will, for example, find references to the subjects of—

(1) Solicitors' negligence insurance in the report of the proceedings at the Annual Conference contained in the November, 1952, issue of the *Law Society's Gazette*;

(2) Public relations in the report of the Annual Conference in the November, 1953, issue of the *Gazette*; and

(3) Appendix "N" in the report of the Annual Conference in the current November issue of the *Gazette*.

The exceptions are that, while the Council have considered the problem of arranging finance to enable solicitors to acquire shares in practices, they have not considered hitherto a proposal that there should be a building society to enable solicitors to buy their houses, nor have they considered a proposal that there should be a solicitors' benevolent scheme run by the Society on the basis of contracting in or out, as they have taken the view that this field is already satisfactorily covered by the Solicitors' Benevolent Association.

I would like to take the present opportunity of reminding members of The Law Society through your columns that all constructive suggestions for advancing the interests of the profession which they may send to me will always receive a welcome here and full consideration by the Council.

T. G. LUND,
Secretary,
The Law Society.

London, W.C.2.

Planning Inquiries

Sir,—I feel that I must write to express my entire agreement with Mr. Desmond Heap's remarks on the above subject, as reported by you at p. 750 of your issue for 5th November—in particular that "Informality had gone far enough and the time had come to introduce rules of procedure to settle the points of argument in advance."

My acquaintance with planning appeals is but recent, and although "old hands" may take in their stride what goes on at such appeals, I can only say that I was, if not amazed, at any rate appalled, at some of my experiences in the conduct of a recent planning appeal of considerable importance to my clients, who were the appellants.

In the first place, I had considerable difficulty in obtaining the various documents constituting the development plan of the county in question. It was not a case of refusal—just what might be termed "administrative difficulties." I got what I needed—eventually. I compared this difficulty with the facility with which one may obtain copies of the development plan for the County of London—just by walking into County Hall, and paying the necessary charges.

The inquiry in question lasted for a day and a half. What was my surprise to see, on the resumption after the luncheon adjournment on the first day, one of the local solicitors representing a number of objectors emerging from the Inspector's private room, followed by the Inspector, who, after taking his place, announced that "Mr. So-and-so has represented to me his clients' objections, and now desires to take no further part in the proceedings." To this day I do not know that the precise objections of Mr. So-and-so's clients were.

At a late stage in the proceedings, the local planning authority's advocate put in certain correspondence concerning the appeal site which had passed between his authority and the Ministry of Agriculture. We had, of course, no prior knowledge of this correspondence or of its contents, and my client's counsel protested as, he said, he had done on many previous occasions—to no avail, of course.

I have referred above to objections being represented privately to the Inspector, and not communicated to the appellants. At a more recent inquiry in which I was concerned, the only opposition to my clients' proposals came from local objectors. Initially, the local planning authority said that they *could not reveal to us the nature of the objections!* They did eventually, but had they persisted in their refusal, I know of no machinery whereby we could have compelled disclosure of the objections—the authors of the old prerogative writs knew nothing of town planning inquiries!

Lest it be thought that this letter is prompted by disgruntlement at lack of success, I hasten to add that in both the above appeals my clients were successful—due to being expertly advised (to which point also Mr. Heap adverted) by counsel specialising in town planning matters, for whose advice and skilful handling of their case my clients were considerably indebted. Due to my own lack of experience in these matters, I played safe, placed no reliance on "informality," and "ran" both the above-mentioned inquiries as I would a High Court action: experience has now taught me that I should continue to do so in future. The note on advice in the appeal form T.C.P. 201/47 is, in my opinion, a snare and a delusion—at any rate, where the subject-matter of the appeal is of importance to the client.

The Rules of the Supreme Court (and, by the same token, the County Court Rules) as to particulars, discovery, interrogatories, and other interlocutory matters, have been, it is almost superfluous to state, evolved for the purpose of clarifying and delimiting the matters in issue, not for the purpose of causing difficulty to all concerned and increasing the costs of litigation. I hope that in the appropriate quarters heed will be given to Mr. Heap's words as to introducing "rules of procedure to settle the points of argument in advance," but I doubt it. The civil servant likes to settle matters quietly behind the scenes, in consultation with whoever he cares to consult—not, as the courts do, on the evidence before them. The spirit of Crichel Down is as much alive as ever it was.

There is more, sir, which I could say on the subject—publication of the Inspector's report, right of appeal, and so on—but you may think this letter long enough already.

J. F. BERGMANN.

London, W.6.

De-Control

Sir,—There is a side to this question which has not appeared either in *The Times* or in your notes "Current Topics."

Here in Southport most of the older houses are of the Victorian ground-floor-first-floor-attic type, and even up to three years ago any jackal with, say, £400, could put down the deposit for a likely house, and the completion would be effected in the name of a third party, so easy were sales in those days. The house would rise quickly in price in frequent resales from £2,000 to £5,000, and during the process the floors would be let off as flats still with the common entrance and a hardboard partition here and there, and the flats are let at anything ranging from £6 6s. (empty or unfurnished) to £2 2s. for the attics. Capital

values are now declining, but the rents remain stable. There is a good trade here in letting single rooms with just the minimum of furniture for £2 10s. per week. It is simply nonsense to maintain that these houses are worth total rentals of £12 to £20 per week, and that the landlords need consideration.

These facts may be repeated elsewhere for all I know, and they can be verified by anyone who seeks residence. There is no doubt that, if any sympathy should be given to landlords, it is to those who own houses of the lower rentals, say from 10s. to £1 per week, and the range of Rental Act protection to tenants should be shifted from the lower to the higher annual values, but the protection should remain.

CHARLES MONTANI.

Southport.

"Slums"

Sir,—Section 9 of the Housing Repairs and Rents Act, 1954, enumerates a new standard of fitness for human habitation to be taken into consideration to decide whether a house is unfit. It should be, however, specially noted that a house does not come within such section if it is reasonably suitable for occupation.

The section says:—

"In determining . . . whether a house is unfit for human habitation regard shall be had to its conditions in respect of . . . repair, stability, natural lighting, water supply, drainage, etc., and the house shall be deemed to be unfit . . . if, and only if, it is so far defective in one or more of the said matters that it is not reasonably suitable for occupation in that condition."

It would seem, therefore, that houses which are reasonably suitable for occupation should not be placed on a slum list for submission to the Minister.

The Ministry pamphlets 55/64 and 75/64 do not state the redress which an owner might have against a local authority if his house is wrongfully placed on a slum list. An owner might have grounds for bringing the matter before the court if the list is open for public inspection or the local authority answers questions from possible purchasers and mortgagees to the effect that the house has been placed on the slum list, with a possible claim for damages.

A. E. HAMLIN.

Sheringham, Norfolk.

Conveyancing Costs

Sir,—It would be churlish to grudge "Suburban Solicitor" the generous measure of artistic licence that he allows himself in rendering my statements and views. With so many clients for ever in constant attendance and so cosily welcome and satisfied—much as Keats described those figures on the Grecian urn—suburban practice sounds desperately tedious and deserving of some light relief. None the less I did not say, nor even faintly suggest, that the "average client"—if there be any such person—complains of costs. Whether the client has any cause to complain is a different and more difficult matter, and it is this question, as I understand it, that is now chiefly agitating your correspondence column.

My factual account of another suburban solicitor, which "Suburban Solicitor" has embellished a little but dismissed as a "supposition" and "out of this world" was true for all that. Here is another, and I hope he may like it better. One of our young men, seeking a change with a view to partnership, was told by the interviewing partner that the firm "did all their own conveyancing." He was mystified and presumably looked it, so the matter was further explained. "We used to send all our conveyancing documents to counsel, but now young *X* does the conveyancing. He seems to understand that sort of thing. It means a big saving in counsel's fees." My informant adds that they seemed very well satisfied with this novel idea of "doing their own conveyancing."

"ESCROW."

NOTES OF CASES

The Notes of Cases in this issue are published by arrangement with the Incorporated Council of Law Reporting, and full reports will be found in the Weekly Law Reports. Where possible the appropriate page reference is given at the end of the note.

HOUSE OF LORDS

INFANT: DIVORCE: CHILD BORN IN ADULTERY: JURISDICTION TO ORDER CUSTODY

Galloway *v.* Galloway

Viscount Simonds, Lord Oaksey, Lord Radcliffe, Lord Tucker and Lord Cohen. 2nd November, 1955

Appeal from the Court of Appeal ([1954] P. 312; 98 SOL. J. 336).

The Matrimonial Causes Act, 1950, s. 26 (1), subtantially reproducing the language of the Matrimonial Causes Act, 1857, s. 35, and a number of intermediate Acts, provides: "In any proceedings for divorce or nullity of marriage or judicial separation, the court may . . . make such provision as appears just with respect to the custody, maintenance and education of the children the marriage of whose parents is the subject of the proceedings . . ." A wife, on an application for the dissolution of her marriage, asked for orders for the custody and maintenance of the child of herself and her husband born before the marriage and at a time when the husband was married to another woman. The special commissioner held that the court had no jurisdiction to make orders in respect of this category of illegitimate child. The Court of Appeal affirmed this decision. The wife appealed to the House of Lords.

VISCOUNT SIMONDS, in a dissenting opinion, said that the question was to be decided by an examination of the relevant words in the context of the Act in which they were found and the then prevailing law. First, as to the prevailing law, it was in 1857 (as to-day) a cardinal rule applicable to all written instruments, wills, deeds or statutes that "child" *prima facie* meant lawful child and "parent" lawful parent. In the context of the Act there was nothing which suggested that illegitimate children were the concern of the Legislature. When it was remembered how different, even to-day, was the measure meted out to illegitimate children and legitimate children, it was extravagant to suppose that they would be subject without distinction to a single provision. The putative father of an illegitimate child had no rights in regard to it nor had he, as between himself and the mother, any obligations or liabilities in respect of it unless within a short period of time she obtained an order against him. Was this to be changed? Was the man whom she had married and alleged to be its father to be subject to new liabilities? Was he, when the years had passed and he had by his generous treatment of the mother's illegitimate child as his own lent colour to the allegation of his paternity, to be the victim of claims which he could not then disprove? The section was dealing with a marriage of which children had been born. The jurisdiction in s. 35 covered cases of nullity as well as divorce but it was a natural and proper use of language to speak of the children of a union as children "the marriage of whose parents is the subject of such suit," even though the result of the suit was to annul the marriage. Children born before the marriage which was the subject of the suit, whose paternity might well be in dispute, were in a different category from those whose parentage was notorious until the marriage was annulled and who, but for the suit, would for ever remain "children the marriage of whose parents was the subject of said suit." Without repugnancy or inconsistency the meaning of the relevant phrase could be confined to those children and, if it could be so confined, according to the proper canon of construction it should be. The appeal should be dismissed. If a revolutionary change was to be made in the law it should be made by the Legislature in such plain words as in modern times it had been accustomed to use when it intended to confer advantages or impose obligations in respect of children, whether legitimate or illegitimate.

LORD OAKSEY said that the question was whether, on its true construction, s. 26 (1) of the Act of 1950 conferred on the court jurisdiction to make provision with respect to the custody, maintenance and education of illegitimate children of parents whose marriage was the subject of proceedings for divorce or nullity of marriage or judicial separation. That section re-enacted the words of s. 35 of the Act of 1857 but it was said that even if s. 35 did, on its true construction, confer such jurisdiction, that construction could not be put on s. 26 (1) owing to the cases

which had been decided between 1857 and 1950. Considering first the true construction of s. 35, it had nothing to do with legitimation or status but provided only for custody, maintenance and education. It was true that the word "children" had acquired the *prima facie* meaning of legitimate children in statutes, wills and deeds because it had been considered that the Legislature, testators and settlors usually intended, in using the single word "children" to refer to legitimate children. But "a wider meaning may, in the case of some statutes, be given to it, so as to include an illegitimate child or illegitimate children, where that meaning is more consonant with the object of the statute" (*Woolwich Union* v. *Fulham Union* [1906] 2 K.B. 240, at p. 246). It was more consonant with the object of the Act of 1857 that jurisdiction over the custody and maintenance of illegitimate children, as well as legitimate children, should be conferred on the Divorce Court in all proceedings referred to in s. 35. There was an obligation on the Crown as *parens patriæ* to deal with their custody. Apart, however, from these considerations, it was admitted that illegitimate children were included in the word "children" in s. 35, but it was said that the word referred only to that class of illegitimate children whose illegitimacy was declared in the suit or proceedings. This was not the meaning of the words used. The child here in question was the child of parents whose marriage was the subject of the proceedings. Not only did the words used accurately describe him but they were used in contradistinction to the words "children of the marriage" which occurred elsewhere in the Act. On the construction of s. 26 (1) of the Act of 1950, the construction of the word "children" adopted by the Court of Appeal had not been put on the words of s. 35 of the Act of 1857 so clearly that, when it was re-enacted by s. 26 (1), it must be given that interpretation in accordance with the principle stated in *Barras* v. *Aberdeen Steam Trawling & Fishing Co., Ltd.* [1933] A.C. 402. His lordship agreed with *M.* v. *M.* [1946] P. 51 and *Packer* v. *Packer* [1954] P. 15. The appeal should be allowed.

LORD RADCLIFFE and LORD TUCKER agreed that the appeal should be allowed.

LORD COHEN would have dismissed the appeal.

Appeal allowed.

APPEARANCES: *Simon*, Q.C., and *Robert Elborne* (*Kingsford, Dorman & Co.*, for *Buckle & Co.*, Peterborough); *Beyfus*, Q.C., and *J. Comyn* (*The Queen's Proctor*).

[Reported by F. H. COWPER, Esq., Barrister-at-Law] **[3 W.L.R. 723**

INCOME TAX: VALUATION OF ASSETS TRANSFERRED FROM TAXABLE ACTIVITY

Sharkey (Inspector of Taxes) *v.* Wernher

Viscount Simonds, Lord Porter, Lord Oaksey, Lord Radcliffe and Lord Tucker

7th November, 1955

Appeal from the Court of Appeal ([1954] Ch. 713; 98 SOL. J. 556).

The taxpayer's wife, Lady Zia Wernher, carried on the activities of a stud farm, which were admitted to be "husbandry" and taxable under Schedule D. She also carried on as a separate activity racing stables, which gave rise to no liability to tax, being a "recreational" enterprise. Horses were bred at the stud farm for the racing stables. In the year of assessment 1949-50, five horses were transferred from the stud to the stables and there was brought into the accounts of the stud farm the cost to Lady Zia of breeding them. The Crown contended that the proper figure would have been their market value at the date of transfer, viz., the price which they would have fetched on a notional sale. The Commissioners for the Special Purposes of the Income Tax held that the cost of breeding was the correct figure and accordingly they discharged the assessment on the estimated market value. Vaisey, J., reversed this decision. The Court of Appeal allowed an appeal by the taxpayer. The Crown appealed to the House of Lords.

VISCOUNT SIMONDS said that it was not in dispute that the enterprise of the stud farm was a taxable activity, viz., that the respondent was chargeable in respect of any profits arising therefrom in accordance with the rules of case I of Schedule D to the Income Tax Act, 1918, relating to trades. A main purpose, if not the main purpose, of the stud farm was to supply the racing establishment. The case had proceeded throughout on the footing that "some figure in respect of the transferred horses fell to be brought into the stud farm accounts as a receipt," but it must be determined whether and why a trader who elected to throw his stock-in-trade into the sea or dispose of it in any other way than by sale in the course of trade was chargeable with any notional receipt in respect of it, before it was asked how he should be charged. The same problem arose whether the owner of a stud farm diverted its produce to his own enjoyment, or a diamond merchant, neglecting profitable sales, used his jewels for his wife's adornment, or a caterer provided entertainment for his daughter's wedding breakfast. Were the horses, the jewels, the cakes and ale to be treated for the purpose of income tax as disposed of for nothing, or for their market value, or for the cost of their production? The Legislature had made inevitable some invasion of the principle that the taxpayer could not make a profit by selling to himself. If there were commodities which were the subject of a man's trade, but might also be the subject of his use and enjoyment, his account as a trader could not properly be made up so as to ascertain his annual profits and gains unless his trading account was credited with a receipt in respect of those goods which he had diverted to his own use and enjoyment. There was no reason for ascribing to them any other sum than he would normally have received in the due course of trade, viz., the market value. The appeal should be allowed.

LORD PORTER agreed.

LORD OAKSEY dissented.

LORD RADCLIFFE and LORD TUCKER agreed that the appeal should be allowed. Appeal allowed.

APPEARANCES: *Sir Reginald Manningham-Buller*, Q.C., A.-G., *R. Borneman*, Q.C., and *Sir Reginald Hills* (*Solicitor of Inland Revenue*); *Graham-Dixon*, Q.C., and *P. M. Rowland* (*Withers and Co.*).

[Reported by F. H. COWPER, Esq., Barrister-at-Law] **[3 W.L.R. 671**

COURT OF APPEAL

TOWN AND COUNTRY PLANNING: RESTRICTED VALUE OF DEMOLISHED LICENSED PREMISES: WHETHER PLANNING PERMISSION NEEDED FOR USE AS SHOP

Central Land Board *v.* Saxone Shop Co., Ltd.

Evershed, M.R., Birkett and Romer, L.JJ. 19th October, 1955

Appeal from the Lands Tribunal by case stated.

The Central Land Board determined that on 1st July, 1948, there was no development value in a vacant site formerly occupied as licensed premises which were destroyed by enemy action, since the restricted value was equivalent to the unrestricted value. This determination was made on the footing that, for the purpose of calculating the restricted value of the site, it had to be assumed that the premises could be rebuilt and that, in the event of their becoming unlicensed, for the licence was in suspense at the material time, the premises could be used for any of the shop purposes within class I of the Town and Country Planning (Use Classes) Order, 1948 (S.I. 1948 No. 954) or class I of the Town and Country Planning (Use Classes for Third Schedule Purposes) Order, 1948 (S.I. 1948 No. 955), and that such use of the premises would not involve a material change of use requiring planning permission. On appeal, the Lands Tribunal held that the determination was wrong, but stated a case for the opinion of the court.

EVERSHED, M.R., said that if immediately before the premises were destroyed by enemy action it could be said that they were being used as a shop, then by virtue of s. 61 (2) (*a*) the restricted value must be calculated on the assumption that they could be used and that planning permission would be granted for their use as a shop of any other kind (with irrelevant exceptions). But that was not so here, for this was in substance an ordinary public house. Nor could it be said that the change of use to a shop would not constitute development within the exclusions contained in s. 12, for the test in the order made for the purposes of that section (S.I. 1948 No. 954) was the same as that relating to s. 61 (2) and para. 6 of the Third Schedule (S.I. 1948 No. 955), i.e., were the premises being used for the purposes of a shop?

BIRKETT and ROMER, L.JJ., agreed. Appeal dismissed.

APPEARANCES: *Ramsay Willis* (*Treasury Solicitor*); *G. D. Squibb* (*Rowe & Maw*).

[Reported by Miss E. DANGERFIELD, Barrister-at-Law] **[3 W.L.R. 614**

LANDLORD AND TENANT ACT, 1954: TENANT AT WILL OF SHOP PREMISES PROTECTED

Wheeler *v.* Mercer

Denning, Hodson and Morris, L.JJ. 24th October, 1955

Appeal from Tunbridge Wells County Court.

A tenant of shop premises, whose quarterly tenancy had been terminated by notice to quit in September, 1953, and who had begun negotiations for a new lease prior to that date, held over pending the conclusion of the negotiations. These continued inconclusively until in April, 1955, the landlord took out a summons for immediate possession in the county court. He claimed that the occupier had in the circumstances of the case become a mere licensee, a tenant at sufferance, or, at most, a tenant at will; and that even if she were a tenant at will, he was entitled under the common law to terminate her tenancy on demand and was not required to comply with the provisions of s. 25 of the Landlord and Tenant Act, 1954 (relating to the termination of tenancies of business premises protected by the Act), since a tenancy at will was not within the protection of the Act. The county court judge dismissed the claim for possession, and the landlord appealed.

DENNING, L.J., said that the occupier had held over with the landlord's consent, not without it, and as such was *prima facie* a tenant at will. She had more than a personal privilege since, if she made good her claim to a new lease, she would be there by right. His lordship thought she was a tenant at will. On the question whether a tenancy at will was within the Act of 1954, the definition of "tenancy" in s. 69, as "a tenancy created . . . by a tenancy agreement," was wide enough to include a tenancy at will, because every such tenancy was created by agreement, express or implied. For the landlord it was said that other sections, and in particular subss. (3) and (4) of s. 25, showed that the only tenancies in contemplation under Pt. II of the Act were those which could be brought to an end by notice to quit or by effluxion of time, and that a tenancy at will, which determined by demand, was not in contemplation at all. In considering that argument, it was necessary to remember the scheme of the Act, which was that tenancies of business premises were automatically extended beyond the common-law time unless and until determined in the manner prescribed by the Act. The object of s. 25 (3) and (4) was merely to make it clear that the notice under the Act must not be given earlier than the common-law time. The omission of tenancies at will was intelligible in that place, without taking them out of the Act altogether, because at common law they could be determined on demand at any time. This tenancy at will, in his lordship's opinion, came within the Act, and the landlord could not determine it except by a six months' notice of termination in accordance with the provisions of s. 25.

HODSON, L.J., concurring, said that s. 43 did not exclude a tenancy at will from Pt. II of the Act; and though it appeared from s. 25 (3) and (4) that the draftsman of the Act did not have in mind a tenancy at will, such tenancies could possibly be included in the words "any other tenancy" in subs. (4). That left open for operation subs. (2), which merely imposed a limit on notices to be given by landlords. The effect was that, in a case not covered specifically by the other subsections of s. 25, a six months' notice under the Act must be required.

MORRIS, L.J., delivered a concurring judgment. Appeal dismissed.

APPEARANCES: *Michael Parker* (*Sole, Sawbridge & Co.*, for *Bailey & Cogger*, Tonbridge); *James Fox-Andrews* (*Waterhouse and Co.*).

[Reported by Miss M. M. HILL, Barrister-at-Law] [3 W.L.R. 714

MASTER AND SERVANT: INJURY TO FELLOW SERVANT BY NEGLIGENT DRIVING OF SERVANT: ACTION AGAINST SERVANT BY MASTER'S INSURERS ROAD TRAFFIC: INSURANCE: WHETHER POLICY SHOULD COVER SERVANT AGAINST ACCIDENTS TO FELLOW SERVANTS

Romford Ice and Cold Storage Co., Ltd. *v.* Lister

Denning, Birkett and Romer, L.JJ. 26th October, 1955

Appeal from Donovan, J.

The Road Traffic Act, 1930, provides by s. 35 (1): "Subject to the provisions of this Part of this Act, it shall not be lawful for any person to use, or to cause or permit any other person to use, a motor vehicle on a road unless there is in force in relation to the user of the vehicle by that person or that other person, as the case may be, such a policy of insurance . . . as complies with the requirements of this Part of this Act." By s. 36 (1): "In order to comply with the requirements of this Part of this Act, a policy of insurance must be a policy which— . . . (*b*) insures such person, persons or body of persons as may be specified in the policy in respect of any liability which may be incurred by him, or them, in respect of the death of or bodily injury to any person caused by or arising out of the use of the vehicle on a road: Provided that such a policy shall not be required to cover—(i) liability in respect of the death arising out of and in the course of his employment of a person in the employment of a person insured by the policy or of bodily injury sustained by such a person arising out of and in the course of his employment; . . ." The Law Reform (Married Women and Tortfeasors) Act, 1935, provides by s. 6: "(1) Where damage is suffered by any person as the result of a tort . . . (*c*) any tortfeasor liable in respect of that damage may recover contribution from any other tortfeasor who is, or would if sued have been, liable in respect of the same damage, whether as a joint tortfeasor or otherwise . . . (2) In any proceedings for contribution under this section the amount of the contribution recoverable from any person shall be such as may be found by the court to be just and equitable having regard to the extent of that person's responsibility for the damage; and the court shall have power to exempt any person from liability to make contributions, or to direct that the contribution to be recovered from any person shall amount to a complete indemnity." In 1949, the defendant, a lorry driver in the employ of the nominal plaintiffs, taking his father with him as mate, drove a lorry to a slaughterhouse in order to collect some waste. After driving into the slaughterhouse yard, he backed the lorry and in so doing injured his father. The father brought an action for damages against the nominal plaintiffs for personal injuries occasioned by his son's negligence. The nominal plaintiffs were insured under two policies: one, a motor vehicle policy which satisfied the requirements of the Road Traffic Act, 1930, but did not cover the defendant from liability for an injury caused to a fellow servant; the other, an employers' liability policy at Lloyd's, contained a clause permitting the underwriters to prosecute in the name of the assured for their own benefit any claim for indemnity or damages or otherwise, and to have full conduct of such proceedings. On 29th January, 1953, McNair, J., gave judgment for the father, whom he found one-third to blame, and awarded him £1,600 damages and costs. On 23rd January, 1953, the underwriters had issued a writ in the name of the nominal plaintiffs; in the action it was claimed that the nominal plaintiffs, as joint tortfeasors, were entitled to contribution from the defendant under the provisions of s. 6 of the Law Reform (Married Women and Tortfeasors) Act, 1935, and to damages for the breach of an implied term in the defendant's contract of service that he would use reasonable skill and care in driving the lorry. Donovan, J., gave judgment for the nominal plaintiffs for the sum claimed. On appeal, the defendant took a preliminary point that the action was premature in that the writ had been issued before any liability had accrued under the father's action. In order to ensure that the case should be heard on the merits, the Court of Appeal, by consent, gave leave for a second action to be brought and consolidated with the first. At the hearing of the appeal it was contended for the defendant (i) that there was no such implied term in his contract of service as alleged; (ii) that under the provisions of the Road Traffic Act, 1930, the nominal plaintiffs should have insured the defendant against liability, not only to the public, but to his fellow servants; that by failing so to insure him they were causing or permitting him to commit an offence; that there was an implied term in his contract of service that he should not be required to do anything unlawful; that the accident in the yard was one "arising out of the use of a vehicle on a road," and that in the premises the nominal plaintiffs could not in law require the defendant to indemnify them; (iii) that the claims for damages for breach of contract and for contribution could not be sustained, as the nominal plaintiffs and the defendant were joint tortfeasors.

DENNING, L.J., delivered a dissenting judgment.

BIRKETT and ROMER, L.JJ., said that the preliminary point failed. Although the claim to contribution under s. 6 of the Act of 1935 was premature in that it could not arise until the liability in damages of the nominal plaintiffs to the father had been established, the breach of the alleged implied term that the

defendant should use due skill and care had occurred before the issue of the writ, so that the first action was maintainable on the latter issue. Secondly, the claim in damages for breach of contract was established, as (i) there was an implied term in the defendant's contract of service that he would drive with reasonable skill and care; see observations of Willes, J., in *Harmer* v. *Cornelius* (1858), 5 C.B. (N.S.), 236, at pp. 246–247, and of Warrington, L.J., in *Weld-Blundell* v. *Stephens* [1919] 1 K.B. 520, at p. 536; (ii) the claim was not defeated by the fact that the nominal plaintiffs were joint tortfeasors, as the doctrine of no contribution between joint tortfeasors had no application when the party claiming had no knowledge of the unlawful act; see *per* Best, C.J., in *Adamson* v. *Jarvis* (1827), 4 Bing. 66, and Warrington, L.J., in *Weld-Blundell* v. *Stephens*, *supra*, at p. 536; (iii) no term could be implied in the defendant's contract of service that the nominal plaintiffs, although insured, would not seek to recover from him any damages which they might have to pay by reason of his negligence. Thirdly, the defence founded on the implication arising out of the provisions of the Road Traffic Act, 1930, failed, as (i) the accident was not one "arising out of the use of a vehicle on a road" against which insurance was required; (ii) the fact that the nominal plaintiffs were insured did not operate as an indemnity to the defendant from being sued in respect of his breach of contract; and (iii) there was no implied term in the defendant's contract of service imposing on the nominal plaintiffs the duty of insuring him against liability for injuries caused to his fellow servants. Fourthly, as the nominal plaintiffs were innocent parties so far as the accident was concerned, Donovan, J., had acted quite rightly in awarding them a complete indemnity under s. 6 (2) of the Act of 1935. So that in the result the nominal plaintiffs were entitled in the first action to damages for breach of contract, and in the second action to such damages and to a full indemnity under the Act. Appeal dismissed.

APPEARANCES: *C. N. Shawcross*, Q.C., and *H. Lester* (*Sidney Torrance & Co.*); *P. O'Connor* (*J. F. Coules & Co.*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] **[3 W.L.R. 631**

RESTRICTIVE COVENANT: MODIFICATION: MEANING OF "OBSOLETE"

***In re* Truman, Hanbury, Buxton & Co., Ltd.'s Application**

Evershed, M.R., Birkett and Romer, L.JJ. 28th October, 1955

Appeal from the Lands Tribunal.

In 1898, land at Leigh-on-Sea was laid out in plots as a building estate, it being then intended that the whole estate should be residential. The plots were sold subject to a restrictive covenant that the "trade of hotelkeeper, innkeeper, victualler of wines, spirits or beer is not to be carried on upon the said land." A large number of residential houses had been erected fronting on a number of roads on the estate. One of the roads on the estate was the London Road and fronting on this road shops had been erected and some residential premises had been converted into shops. The applicant company, a firm of brewers, had purchased two plots fronting London Road and applied under s. 84 of the Law of Property Act, 1925, to have the restrictive covenant modified so as to permit the erection of a public house, contending that the changes consequent on the erection of shops rendered the covenant obsolete so far as the London Road frontage of the estate was concerned. The application was opposed by a number of owners of premises on the estate. The Lands Tribunal, holding that, although there was a change in the character of the area, that did not render the covenant in relation to licensed premises "obsolete" within s. 84 (1) (*a*) and, further, that certain of the objectors entitled to the benefit of the covenant would be injured if it were discharged or modified, dismissed the application. The applicants appealed.

ROMER, L.J., said that the meaning of the term "obsolete" might very well vary according to the subject-matter to which it was applied. Here the court was concerned with its application to restrictive covenants as to user, and these covenants were imposed when a building estate was laid out, as was the case here of this estate in 1898, to preserve the character of the estate as a residential area for the mutual benefit of all those who built houses on the estate or subsequently bought them. If the character of an estate as a whole or of a particular part of it gradually changed, a time would come when the purpose for which the covenant was imposed could no longer be achieved, for what was intended at first to be a residential area had become, either through express or tacit waiver of the covenants, substantially a commercial area. When that time came, it might be said that the covenants had become obsolete because their original purpose could no longer be served, and it was in that sense that the word "obsolete" was used in s. 84 (1) (*a*). In the present case, however, the finding of the tribunal that the discharge for which the applicants were asking would seriously injure the persons entitled to the benefits of the covenant, rendered it impossible to say that the covenant had become "obsolete" within the meaning of s. 84 (1) (*a*) as construed.

EVERSHED, M.R., and BIRKETT, L.J., agreed. Appeal dismissed.

APPEARANCES: *G. Squibb* (*Gibson & Weldon*, for *H. Maxwell Lewis*, Southend-on-Sea); *W. B. Harris* (*J. P. Nolan & Janes*, Southend-on-Sea); *Geoffrey Rippon* (*Bates, Son & Braby*, Southend-on-Sea).

[Reported by J. D. PENNINGTON, Esq., Barrister-at-Law] **[3 W.L.R. 704**

CHANCERY DIVISION

SUR-TAX: MAINTENANCE PAYMENTS TO PERSON OUT OF JURISDICTION: WHETHER DEDUCTIBLE

Bingham *v.* Inland Revenue Commissioners

Harman, J. 14th October, 1955

Appeal from the Special Commissioners.

In 1929 the taxpayer, then resident and domiciled in the Netherlands, was divorced by his wife under a decree of a Dutch court who ordered him to pay annual maintenance of 34,500 guilders. He came to England in 1934 and remained here until 1940, and during these years duly paid the maintenance to his former wife in Holland, making the payments out of profits or gains brought into charge to British income tax. In respect of an assessment to sur-tax for the fiscal year 1937–38 he claimed to deduct the amount of the maintenance which he had paid in accordance with the Dutch decree. The Special Commissioners rejected the claim. The taxpayer appealed.

HARMAN, J., said that it was true that the taxpayer's income had been diminished by some £4,000, and it would seem just that he should be allowed such a deduction. By s. 38 (2) of the Finance Act, 1927, "total income" was the income of a person from all sources estimated on income tax principles as applicable to income tax chargeable at the standard rate. The effect of s. 39 (3) was that sur-tax was not payable in respect of any annual sum which might be deducted in computing total income. Under r. 19 of the All Schedules Rules of the Income Tax Act, 1918, which dealt with cases, as the present case, where payments were made out of income already brought into charge for tax, the scheme was that the person obliged to make the payment was charged with the tax, and the person entitled to receive it was bound to suffer that deduction; so that under an ordinary English maintenance order the taxpayer's claim would be successful. But the Crown contended that there was a line of cases which showed that no deduction could be made unless the payer could deduct income tax under r. 19 and pass it on to the recipient; the reason being, that what was intended was to prevent double taxation so that it only applied where the recipient was himself liable to tax; if applied where the recipient was not liable to tax, that would result in some tax not being paid. It was admitted that the taxpayer was not entitled as against his former wife to deduct tax, as she was not liable to English taxation (*Keiner* v. *Keiner* (1952), 34 Tax Cas. 346). A consideration of the language used in *Earl Howe* v. *Inland Revenue Commissioners* [1919] 2 K.B. 336 and *Rossdale* v. *Fryer* [1922] 2 K.B. 303 showed that the contention of the Crown must prevail and that, if the sum deducted was taxable as part of the profits of the recipient, a deduction could be made, but not otherwise. Appeal dismissed.

APPEARANCES: *R. Borneman*, Q.C., and *G. B. Graham* (*Frere, Cholmeley & Nicholsons*); *J. E. S. Simon*, Q.C., and *Sir R. Hills* (*Solicitor of Inland Revenue*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] **[3 W.L.R. 663**

FAMILY PROVISION: SUBSTANTIAL PART OF WIDOW'S MAINTENANCE SUBJECT TO RISK OF ABATEMENT: REASONABLENESS

***In re* Doring; Doring *v.* Clark**

Wynn Parry, J. 19th October, 1955

Adjourned summons.

A testator by his will, in addition to bequeathing half the income of his residuary estate (estimated to produce £600) to

his widow for life, bequeathed an annuity of £500 payable to her during the joint lives of herself and the surviving partner out of the profits of a business forming the subject-matter of a partnership deed between himself and his brother. The annuity was bequeathed to her in the exercise by the testator of a right conferred on him by the articles of partnership and was liable to abatement if the profits amounted to less than £3,000 in any year. The widow applied to court that further provision might be made for her maintenance.

WYNN PARRY, J., said that having regard to the considerations set out in *In re Borthwick* [1949] Ch. 395 and *In re Inns* [1947] Ch. 576, the provision for the widow must be regarded as reasonable so far as *quantum* was concerned. But the provision of £500 was subject to contingencies; it would cease altogether if the brother died, and would abate if the profits of the business fell. It was not reasonable to leave the widow's future income subject to such contingencies. There would be an order that there should be paid out of the income of the residuary estate an annuity at the rate of £500 during widowhood, with a proviso that neither the annuity nor any part of it should be payable except to the extent that that sum was not received under the provision in the partnership deed. It had been suggested that there should be a declaration merely that the widow should have further maintenance, with liberty to apply at some further date, as had been done in *In re Franks* [1948] Ch. 62. But the present case was distinguishable in that the future *quantum* required had been already ascertained. Order accordingly.

APPEARANCES: *J. Monckton* (*Wright, Son & Pepper*); *R. B. S. Instone* (*Edwin E. Clark & Son*); *H. E. Francis* (*John Bartlett and Son*, for *Aldrich, Crowther & Bartlett*, Brighton).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [1 W.L.R. 1217

SETTLED LAND: IMPROVEMENT: APPLICATION OF CAPITAL: INCOME TAX ALLOWANCE DEDUCTIBLE

***In re* Pelly's Will Trusts; Ransome *v.* Pelly**

Wynn Parry, J. 25th October, 1955

Adjourned summons.

A testator by his will dated 22nd February, 1940, settled certain freehold property on trust for the first defendant for life without impeachment for waste, with remainder in the events which had happened to the second defendant for life. The testator died on 16th October, 1940. Since October, 1940, the tenant for life had farmed the land which comprised the settled land. In the course of such occupation and farming, he had carried out improvements which fell within s. 73 (1) (iv) of the Settled Land Act, 1925. On a summons taken out by the trustees for the determination of various questions of construction under the will of the testator, the question relevant to this report was whether on the true construction of the Settled Land Act, 1925, and in particular of ss. 73 and 75 thereof, the trustees in applying capital money in payment for an improvement authorised by the Act were, on the assumption that the capital money so applied did not fall to be regarded for the purposes of the Income Tax Acts either as income of the tenant for life or as a receipt of the trade of farming carried on by him, entitled to deduct and retain out of the capital money so applied money representing the whole or any and, if so, what part of the relief from income tax recovered or recoverable by the tenant for life in respect of the expenditure incurred or to be incurred by him.

WYNN PARRY, J., said that the question did not appear to be covered by authority, but it had been pointed out recently by Harman, J., in *In re Sutherland Settlement Trusts* [1953] Ch. 792, at p. 806, that the effect of s. 75 of the Settled Land Act, 1925, was that in giving a mandate to the trustees under that section the tenant for life was acting as trustee, and must have regard, as trustee, not only to the interests of himself and his assign, but to those of the remainderman. It appeared to him (his lordship) that that underlying principle was one which ought to be applied in this case. Once it was appreciated that under s. 107 of the Settled Land Act, 1925, the tenant for life, in exercising any power under the Act, was directed to have regard to the interests of all parties entitled under the settlement, and that in relation to the exercise of those powers he was to be deemed to be in the position and to have the duties and liabilities of a trustee for those parties, he did not see how he could consistently retain the benefit of the whole of the money spent on any improvement and the benefit of any maintenance claim which comprised the expenditure of those moneys. If he were allowed to do so, he would obviously be retaining a profit and, being a trustee, he ought not to be allowed to do that. He would declare that the tenant for life must be accountable for any money paid or allowed on a maintenance claim to the extent to which the money so allowed was referable to the money expended on the improvement. He further took the view that there was a definite obligation on the tenant for life to make the necessary maintenance claim whenever he was entitled to do so under the Income Tax Acts; otherwise the whole question would be left to the whim of the tenant for life. Order accordingly.

APPEARANCES: *Denys Buckley* (*Ashley, Tee & Sons*); *D. H. McMullen* (*Fairfoot & Co.*); *A. W. L. Franklin* (*Fairfoot & Co.*).

[Reported by Mrs. IRENE G. R. MOSES, Barrister-at-Law] [3 W.L.R. 696

QUEEN'S BENCH DIVISION

LICENSING: WATCH BY POLICE ON LICENSED PREMISES: WARNING TO LICENSEE BY THIRD PARTY: WHETHER OBSTRUCTION OF POLICE

Hinchliffe *v.* Sheldon

Lord Goddard, C.J., Cassels and Streatfeild, JJ.

20th January, 1955

Case stated by Saddleworth justices.

H, the son of the licensee of a hotel, returned to the hotel one night after permitted licensing hours and, seeing that police were watching the premises, knocked at the door and shouted a warning to his parents that the police were about. A police constable immediately knocked at the door, but some ten minutes elapsed before the licensee admitted him to the premises. No licensing offence was proved against the licensee, but *H* was charged with obstructing the police in the execution of their duty, contrary to s. 2 of the Prevention of Crimes Amendment Act, 1885, and convicted. He appealed.

LORD GODDARD, C.J., said that the defendant had relied on *Bastable* v. *Little* [1907] 1 K.B. 59, which decided that it was not an offence for an A.A. scout to warn motorists that they were entering a police trap, as there was no evidence that the motorists were committing any offence. But in *Betts* v. *Stevens* [1910] 1 K.B. 1 it was decided that directly it was shown that an offence was being committed by a motorist by travelling at more than twenty miles per hour when the scout warned him, then the scout was interfering with the police. The defendant claimed that he could not be convicted unless it was shown that an offence was being committed, but s. 151 (1) of the Licensing Act, 1953, provided: "a constable may at any time enter licensed premises . . . for the purpose of detecting the commission of any offence against the Act." The police had a right to enter at any time, whether an offence was committed or not. In the present case, their intention to enter was frustrated and delayed by the defendant. Obstruction meant making it more difficult for the police to carry out their duties. The appeal should be dismissed.

CASSELS and STREATFEILD, JJ., agreed. Appeal dismissed.

APPEARANCES: The defendant in person; *F. P. Neill* (*Cummings, Marchant & Ashton*, for *R. C. Linney*, Wakefield).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [1 W.L.R. 1207

LEGAL AID: DAMAGES PAID TO LEGALLY AIDED PLAINTIFF HELD BY LAW SOCIETY: GARNISHEE ORDER NISI AGAINST LAW SOCIETY BY JUDGMENT CREDITOR OF PLAINTIFF

PRACTICE AND PROCEDURE: RIGHT OF JUDGMENT DEBTOR TO APPEAR ON APPLICATION TO MAKE GARNISHEE ORDER ABSOLUTE

Dawson *v.* Preston: Law Society (Garnishees)

Lord Goddard, C.J., Ormerod and Glyn-Jones, JJ.

12th October, 1955

Appeal from Master Lawrence.

In 1954, the judgment debtor, as a legally aided person, brought an action to recover damages for breach of contract. The action was settled and on 27th July, 1954, agreed damages of £350 were paid to The Law Society, as administrator of the Legal Aid Fund. On 5th August, 1954, £275 was paid out of the Legal Aid Fund to the judgment debtor, on The Law Society being informed that the costs of the action when taxed would

not exceed £75. On 11th November, 1954, the judgment creditor obtained a garnishee order *nisi* against The Law Society. The judgment creditor's affidavit stated: "By a judgment of the court given in this action and dated 8th June, 1954, it was adjudged that I should recover against the . . . judgment debtor the sum of £77 7s. and costs allowed at £8 8s. (2) The said judgment still remains unsatisfied to the extent of £85 15s. (3) The Law Society as administrators of the Legal Aid Fund are indebted to the judgment debtor in the sum of £75 damages or thereabouts." On 6th February, 1955, an application was made to Master Lawrence for the garnishee order to be made absolute. He adjourned the matter in order that an inquiry might be held to ascertain in what amount The Law Society was indebted to the judgment debtor. On 27th April, 1955, an inquiry having been held, Master Lawrence made the garnishee order absolute, finding that £66 14s. 6d. was due from The Law Society to the judgment debtor, and ordered that sum to be paid to the judgment creditor. The judgment debtor appealed.

LORD GODDARD, C.J., said that the judgment creditor had taken two preliminary points; first, that the judgment debtor was not entitled to appeal: and, secondly, that as he was not a person affected by the order, no appeal could be entertained. But by R.S.C., Ord. 45, r. 1, where garnishee proceedings were taken, the order *nisi* had to be served on the judgment debtor, so that he must be entitled to appear at the hearing and submit arguments. The mere fact that the rule provided that he must be served with the order *nisi* showed that he had a right to be heard and, if the order made affected him, to appeal. The Law Society had not appealed, but were represented by counsel; they had been invited to serve notice of appeal, but elected not to do so, and therefore their counsel had not been heard. On the main issue, it was not necessary that a judgment creditor seeking an order absolute should set out the exact amount owed by the garnishee to the judgment debtor; he had only to show that there was a debt due. The debts which could be attached were not only those presently payable; they included those *debita in præsenti solvenda in futuro*; see *per* Bankes, L.J., in *O'Driscoll* v. *Manchester Insurance Committee* [1915] 3 K.B. 499. When The Law Society received the damages, they become an accounting party to the judgment debtor. Under the Act and regulations, there was a charge in their favour to reimburse the Legal Aid Fund any additional sums of costs to which they had been put other than those recovered from the other side. Because of that charge, The Law Society were entitled to find out how much the costs and proper deductions would be before paying the client, so that a garnishee order on the Society would only attach to so much of the money in their hands as would be payable to the legally aided person. Subject to the charges indicated, the money in The Law Society's hands was due to the judgment debtor, and the master's order was right.

ORMEROD and GLYN-JONES, JJ., agreed. Appeal dismissed.

APPEARANCES: *F. Hallis* (*Gard, Lyell & Co.*, for *Theodore Bell, Cotton & Curtis*, Sutton); *J. R. B. Fox-Andrews* (*Wilkins, Rohan & Newman*); *J. Perrett* (*James and Charles Dodd*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] **[1 W.L.R. 1219**

MASTER AND SERVANT: CATERING WAGES ACT, 1943: PROFIT-SHARING AGREEMENT BY HUSBAND AND WIFE TO MANAGE CAFÉ: WHETHER WITHIN ACT

Hearst *v.* Clark

Lloyd-Jacob, J. (sitting as an additional judge).

12th October, 1955

Action.

The Catering Wages Act, 1943, provides by s. 1 (4): "For the purposes of this Act, any worker who, for the purposes of any undertaking or part of an undertaking, performs any work in pursuance of an arrangement express or implied made by the worker by way of trade with the persons carrying on that undertaking shall be deemed to be employed by them in that undertaking or part." A husband and wife entered into a contract under which they became joint managers of a café, the arrangement being that they should share the profits of the business with the owner in agreed proportions. The receipts of the business did not provide a sum sufficient to enable the owner to receive his stipulated £15 a week, to provide the managers with reasonable remuneration, and to meet the outgoings. After being dismissed by the owner they brought an action for damages for wrongful dismissal, in which they contended that the contract fell within the terms of the Catering Wages Act, 1943, and that they were entitled to remuneration as "assistants in charge" in accordance with the terms of the Wages Regulation (Unlicensed Place of Refreshment) Order, 1953.

LLOYD-JACOB, J., said that, having regard to the terms of the Act, there was no doubt that the plaintiffs were "workers," and that they entered into an arrangement with the defendant "by way of trade." The terms of s. 1 (4) were so wide that the plaintiffs must be regarded as being within its purview. It had been contended that *Parkinson* v. *H. & J. Plumpton* [1954] 1 W.L.R. 75; 98 SOL. J. 13, indicated that the joint employment of two persons was not within the Act; but that case did not appear to decide what had been suggested, nor was it directly relevant to the present issues. It was further suggested that the contract ought not to be regarded as a contract of service but a contract for services; but the circumstances of the case established the *indicia* of a contract of service as set out in *Pauley* v. *Kenaldo, Ltd.* [1953] 1 W.L.R. 187; 97 SOL. J. 49. There could be no doubt that on its true construction the Act applied to employees whether engaged individually or as a number. The Wages Regulation (Unlicensed Place of Refreshment) Order, 1953, which laid down the status which the plaintiffs should hold, and provided scales for minimum remuneration, did not in terms provide for the performance of a particular duty by more than one person. But there was no difficulty in construing the order by regarding the two plaintiffs as "assistants in charge," alternately responsible for the control of the café; so that it could not be said that the difficulties under the order were such that the plaintiffs could not be regarded as within the purview of the Act. Judgment for the plaintiffs.

APPEARANCES: *B. Sheen* (*Waterhouse & Co.*, for *Few & Kester*, Cambridge); *L. J. Solley* (*Oscar Mason & Co.*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] **[1 W.L.R. 1210**

PUBLIC HEALTH: NOTICE REQUIRING PROVISION OF NEW DUSTBIN: DUTY OF JUSTICES

Peterborough Corporation *v.* Holdich

Pearce, Barry and Glyn-Jones, JJ. 21st October, 1955

Case stated by Peterborough justices.

Section 75 of the Public Health Act, 1936, as amended, provides: "(1) A local authority who, as respects their district or any part thereof, have undertaken the removal of house refuse may by notice require the owner or occupier of any building within the district, or, as the case may be, within that part of the district, to provide such number of covered dustbins for the reception of house refuse of such material, size and construction as the authority may approve . . . Any person aggrieved by a requirement of the local authority under this subsection may appeal to a court of summary jurisdiction. . . . (3) A local authority may, as respects their district or any part thereof, in lieu of requiring the owners or occupiers of buildings to provide and maintain dustbins for the reception of house refuse, undertake themselves to provide and maintain such dustbins as may be necessary and, so long as such an undertaking is in force, the authority may make in respect of each dustbin provided by them such annual charge not exceeding five shillings as they think proper . . ." The Local Government (Miscellaneous Provisions) Act, 1953, provides by s. 8 (4): "Where an appeal is brought under [s. 75 (1) of the Public Health Act, 1936] in respect of a notice requiring one of two persons who are respectively the owner and the occupier of a building to provide a dustbin, and the grounds upon which the appeal is brought include the ground that it was not equitable that the notice should have been served on the appellant—(*a*) the appellant shall serve a copy of his notice of appeal on the other of the two said persons; and (*b*) on the hearing of the appeal the court may make such order as it thinks fit with respect to compliance with the first-mentioned notice either by the appellant or by the said other person; . . ." A houseowner on whom a notice had been served under s. 75 (1) of the Act of 1936, requiring him to provide a proper dustbin for a house occupied by his tenant, appealed to a court of summary jurisdiction on the ground that it was not equitable for him to comply with the notice, serving notice of his appeal on the occupier. The justices allowed the owner's appeal, but, although they found that the present dustbin was defective, they refused to make an order against the occupier, who was also before the court. The local authority appealed.

PEARCE, J., said that the local authority contended that, though the words of s. 8 (4) of the Act of 1953 provided that

the justices "may" make an order, in the present case it was necessary for them to make an order. Section 75 (3) of the Act of 1936 did not enable the local authority themselves to supply a dustbin, making a charge, to a particular house; it was only intended to deal with a particular part of a district. In *R. v. Notts. Quarter Sessions; ex parte Harlow* [1952] 2 Q.B. 605, Parker, J., had used language which might indicate otherwise, but it was apparent that he was not then considering the exact wording of the subsection or purporting to construe it. As to the Act of 1953, it was necessary to use the word "may," as the dustbin in question might be found to be sound, so that no order would be required. Once it was proved that there was no adequate dustbin, when both the owner and occupier were before the court, the court had a duty to make an order against one or other of them, and the case must be remitted with that direction.

BARRY and GLYN-JONES, JJ., agreed. Appeal allowed.

APPEARANCES: *E. Dennis Smith* (*Sharpe, Pritchard & Co.*, for *C. P. Clarke*, Town Clerk, Peterborough); *P. Fitzgerald* (*Bridges, Sawtell & Co.*, for *Percival & Son*, Peterborough).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [3 W.L.R. 626

FOOD AND DRUGS: LOAF CONTAINING STRING NOT "UNFIT FOR HUMAN CONSUMPTION" COSTS: POWER OF DIVISIONAL COURT TO AWARD COSTS IN COURT BELOW

Turner & Son, Ltd. *v.* Owen

Lord Goddard, C.J., Ormerod and Barry, JJ. 24th October, 1955

Case stated by Nottingham justices.

A loaf of bread bought from a shop was found to contain a piece of string. The bakers were prosecuted under s. 9 (1) of the Food and Drugs Act, 1938, for selling food which was unfit for human consumption. At the hearing before the justices an adjournment was asked for by the defendants on the ground that the same point was under appeal in *J. Miller, Ltd.* v. *Battersea Borough Council* (since heard and determined; see [1955] 3 W.L.R. 559; *ante*, p. 762). An adjournment was refused; the defendants were convicted, and appealed.

LORD GODDARD, C.J., said that the only complaint against the loaf was that there was a small piece of string in it. That did not make the loaf unfit for human consumption, though it might be that an information could be preferred under s. 3 charging the sale of food not of the nature, substance and quality demanded. The case was governed by *Miller's* case, *supra*, which laid down that s. 9 (1) was aimed at the sale of putrid food which would be dangerous to eat, so that the conviction must be quashed with the costs of the appeal. The defendants had asked also for an order for the costs in the court below. It seemed that the Divisional Court must have power to deal with the costs below, when they thought fit, and such an order had been made in at least two cases, the last being *Mills & Roddys, Ltd.* v. *Leicester City Council* (unreported, 29th January, 1946). There were two reasons in the present case why such an order should be made. First, that such prosecutions ought to be launched with much greater care, having regard to the alternative charge available; secondly, it was known that *Miller's* case was under appeal, and it would have been better if an adjournment had been allowed until that case had been decided. It was not necessary in the present case to remit it to the justices to assess the *quantum*; there would be an order that the defendants should recover from the prosecutor the sum of £7 7s. as costs in the court below.

ORMEROD and BARRY, JJ., agreed. Appeal allowed, with costs of appeal and costs below.

APPEARANCES: *M. Griffith-Jones* (*Sidney C. Elphick*, for *Clayton, Massey & Mason*, Nottingham); *Elson Rees* (*Sharpe, Pritchard & Co.*, for *Town Clerk, Nottingham*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [3 W.L.R. 700

CRIMINAL LAW: DIVIDED PREMISES: WHETHER A BROTHEL

Strath *v.* Foxon

Lord Goddard, C.J., Ormerod and Glyn-Jones, JJ.

28th October, 1955

Case stated by Bow Street magistrate.

The defendant was charged with letting certain premises with the knowledge that they were to be used as a brothel contrary to s. 13 (3) of the Criminal Law Amendment Act, 1885. The premises in question consisted of the first, second and third floors of a house to which access was obtained by the same street door and which were reached by the same staircase on which a substantial door fitted with a Yale lock divided the whole of the third floor from the lower ones so that the third floor was completely self-contained. The magistrate found that the defendant, knowing that they intended to use the premises for the purposes of prostitution, met at the same time and place but by independent appointment, two women, and let the first and second floors to one and, as a separate letting, the third floor to the other at the same rent; that the tenant of the third floor (which had no kitchen) used the kitchen on the second floor, but, save for the kitchen, there was no intention of a common user; and that both tenants took a number of men into the premises for the purposes of prostitution, and for such purposes the first and second floors were used exclusively by the tenant thereof and the third floor only by its respective tenant. The magistrate considered that since there were separate lettings and no common user the premises could not in law constitute a brothel. The prosecutor appealed.

ORMEROD, J., reading the judgment of the court, referred to *Singleton* v. *Ellison* [1895] 1 Q.B. 607, *Durose* v. *Wilson* (1907), 71 J.P. 263, and *Caldwell* v. *Leech* (1913), 109 L.T. 188, and said that in view of those authorities it was clear that premises could not be regarded as a brothel if they were used by one woman only. The only question, therefore, was whether the two flats in question were separate premises. Every case must depend on its own facts, and it might well be that in some cases the evidence would be such that the court would find that the arrangements made were a subterfuge to avoid the consequences of s. 13. In the present case, however, the magistrate, after hearing the evidence and making a personal inspection of the premises, had found that there were separate lettings of the two flats, and no common user other than a joint user of the kitchen. There was evidence to justify his findings, and the court could not, therefore, interfere with his decision. Appeal dismissed.

APPEARANCES: *Sebag Shaw* (*Allen & Son*); *Fenton Bresler* (*Bernard Samuel Berrick & Co.*).

[Reported by Miss J. F. LAMB, Barrister-at-Law] [3 W.L.R. 659

ROAD TRAFFIC: NOTICE OF INTENDED PROSECUTION: DEFENDANT UNCONSCIOUS IN HOSPITAL: NOTICE TO USUAL RESIDENCE

Sandland *v.* Neale

Lord Goddard, C.J., Ormerod and Barry, JJ.

4th November, 1955

Case stated by Wallasey justices.

The Road Traffic Act, 1930, provides by s. 21 that in the case of a prosecution for reckless or dangerous driving, a person shall not be convicted unless "... (*c*) within ... fourteen days a notice of the intended prosecution specifying the nature of the alleged offence ... was served on or sent by registered post to him ..." On 23rd January, 1955, the defendant was seriously injured in a car accident and taken to hospital. In view of the defendant's condition it was thought improper and unwise to serve a notice of intended prosecution under s. 21 of the Road Traffic Act, 1930, on the defendant personally within the period of fourteen days required by the statute, and the defendant would not have understood it if the notice had been served then. The police, having ascertained that the defendant's wife was living at the defendant's usual residence, sent the notice, addressed to the defendant at his home on 2nd February, where it was received on 3rd February. The notice was not received personally by the defendant until after the expiration of the statutory period of fourteen days. The justices were of opinion that the notice had not been properly sent, and dismissed the information. The prosecutor appealed.

LORD GODDARD, C.J., said that whether the defendant received the notice within fourteen days was immaterial; the section required the notice to be sent within fourteen days and said nothing about receipt, because the person to whom it was sent might be away from home. But it was said that because the police knew that the defendant was not at home, but in hospital, the letter should have been sent to the hospital, and *Holt* v. *Dyson* [1951] 1 K.B. 364 had been relied on. In *Stanley* v. *Thomas* [1939] 2 K.B. 462, the police had interviewed the defendant in hospital within the fourteen days, and sent the notice in due

time to his usual residence. It was held that the notice was duly sent, as the police might reasonably think that the defendant would be back at home before the time had expired. That case was distinguished in *Holt's* case, *supra*, where the injured person lived at Worthing, but was in hospital at Hove. She was interviewed in hospital, and the notice was sent to Worthing. The notice was held back as the police knew she would be remaining in hospital, and made no inquiries as to whether there was anyone in charge at her home. In the present case the police knew that the wife was at home, and it was eminently reasonable that they should send the notice where it would be received by the wife who could deal with anything urgent while the husband lay unconscious. The duty was performed if the notice was sent wherever it would most likely come to the defendant's notice within the specified time.

ORMEROD, J., agreed.

BARRY, J., dissented. Appeal allowed.

APPEARANCES: *F. D. Paterson* (*Kinch & Richardson*, for *Percy Hughes & Roberts*, Birkenhead); *G. Clover* (*Carpenters*, for *Laces & Co.*, Liverpool).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [3 W.L.R. 689

SURVEY OF THE WEEK

HOUSE OF LORDS

PROGRESS OF BILLS

Read Second Time :—

Leicester Corporation Bill [H.C.] [10th November.
London County Council (Loans) Bill [H.C.] [10th November.

Read Third Time :—

Aliens' Employment Bill [H.C.] [10th November.

In Committee :—

Friendly Societies Bill [H.C.] [10th November.

HOUSE OF COMMONS

A. PROGRESS OF BILLS

Read First Time :—

Acquisition of Land (Assessment of Compensation) Bill [H.C.] [9th November.

To amend the basis of compensation for land acquired compulsorily under Act of Parliament.

Automation and Electronics Bill [H.C.] [9th November.

To provide for the establishment of a permanent committee to inquire into, review and report on the social, educational, cultural, and economic needs and consequences of the application of automation and electronic devices to British industry and agriculture; and for purposes connected therewith.

Hotel Proprietors (Liabilities and Rights) Bill [H.C.] [9th November.

To amend the law relating to inns and innkeepers.

Industrial Rating Bill [H.C.] [9th November.

To repeal s. 68 of the Local Government Act, 1929, and s. 45 of the Local Government (Scotland) Act, 1929.

Justices of the Peace Act, 1361 (Amendment) Bill [H.C.] [9th November.

To amend the Justices of the Peace Act, 1361.

Leasehold Enfranchisement Bill [H.C.] [9th November.

To make provision for the enfranchisement of residential property held under long leases; and for purposes connected with the matter aforesaid.

Legitimation (Re-registration of Birth) Bill [H.C.] [9th November.

To amend s. 14 of the Births and Deaths Registration Act, 1953, and certain provisions of the Legitimacy Act, 1926; and for connected purposes.

Litter Bill [H.C.] [9th November.

To make provision for the abatement of litter; to prescribe penalties for the deposit of litter; and for matters connected with the purposes aforesaid.

Local Authorities (Expenses) Bill [H.C.] [9th November.

To enable local authorities to defray certain expenses in connection with official and courtesy visits; and for purposes connected with the matter aforesaid.

Local Government (Street Works) (Scotland) Bill [H.C.] [9th November.

To authorise local authorities in Scotland to contribute to the expenses incurred by frontagers and others in connection with the construction, maintenance or making up of private streets, new streets and footways.

National Insurance Bill [H.C.] [9th November.

To provide for altering the extent to which deductions from widows' benefits and retirement pensions under the National Insurance Act, 1946, are to be made in respect of earnings.

National Insurance (Industrial Injuries) Bill [H.C.] [9th November.

To amend the National Insurance (Industrial Injuries) Acts, 1946 to 1954, in relation to increases of disablement pension in respect of special hardship allowance and unemployability supplement; and for purposes connected therewith.

Obscene Publications Bill [H.C.] [9th November.

To amend and consolidate the law relating to obscene publications.

Rural Transport Improvement Bill [H.C.] [9th November.

To make provision for the improvement of transport in rural areas by rail, road and water; and for other purposes.

Sanitary Inspectors (Change of Designation) Bill [H.C.] [9th November.

To change to public health inspectors the designation of sanitary inspectors appointed under the Local Government Act, 1933, or the London Government Act, 1939.

Small Lotteries and Gaming Bill [H.C.] [9th November.

To authorise the conduct of small lotteries for other than private gain by societies for raising money for charitable, sporting and other purposes and to amend the law with respect to gaming; and for other purposes connected with the matters aforesaid.

Trustee Investment Bill [H.C.] [9th November.

To amend the Trustee Act, 1925, and the law relating to the range of trustee investments for charitable and non-charitable trusts; and for purposes connected therewith.

Wills, &c. (Publication) Bill [H.C.] [9th November.

To restrict the publication of particulars as to the estates of deceased persons and the contents of wills, codicils, and other testamentary documents; and for purposes connected with the matters aforesaid.

Workmen's Compensation (Supplementation) Bill [H.C.] [9th November.

To provide for the payment of allowances out of the Industrial Injuries Fund to workmen to whom the Workmen's Compensation Acts apply; and for purposes connected therewith.

Read Second Time :—

Expiring Laws Continuance Bill [H.C.] [7th November.
Finance Bill [H.C.] [8th November.
House of Commons Disqualification Bill [H.C.] [9th November.
Local Government Elections Bill [H.C.] [11th November.
Post Office and Telegraph (Money) Bill [H.C.] [11th November.
Sugar Bill [H.C.] [10th November.

Read Third Time :—

Rural Water Supplies and Sewerage Bill [H.C.] [10th November.

B. QUESTIONS

MURDER TRIALS (SHORTHAND NOTE TRANSCRIPTS)

The ATTORNEY-GENERAL said that by virtue of the Criminal Appeal Act, 1907, a shorthand note was taken of the proceedings

at all trials on indictment, and since that year a transcript had been furnished to the Court of Criminal Appeal on all appeals and applications for leave to appeal against conviction for murder. A transcript was also supplied for the use of the Home Secretary when he required one. The distribution of transcripts was restricted by the Criminal Appeal Rules and they were not available for study by members of the public.

[7th November.

ATTORNEY-GENERAL'S DEPARTMENT (STAFF AND SALARIES)

The ATTORNEY-GENERAL gave the following table showing the number of civil servants employed in his department on 31st March of each of the last five years and the amount paid to them in salaries during the preceding twelve months.

Year	Number of staff	Amount paid in salaries
		£ s. d.
1951 ..	6	4,647 19 6
1952 ..	9	5,851 12 2
1953 ..	9	6,074 17 8
1954 ..	9	6,463 18 7
1955 ..	9	7,377 9 10

[7th November.

ADMINISTRATIVE TRIBUNALS (COMMITTEE OF INQUIRY)

Asked (i) whether he would consider the terms of reference of the Committee of Inquiry into the practices and procedures of administrative tribunals so that it might be empowered to consider, in the case of compulsory purchase of land, the whole principle of appeal from the Minister to the ordinary courts of law, and (ii) whether the existing terms were sufficiently wide to allow of consideration by the Committee of the question of appeals from administrative tribinals to the ordinary courts of law, the PRIME MINISTER said that in his opinion the terms were already wide enough to include both matters.

[8th November.

JOINT STOCK COMPANY DONATIONS (TAX RELIEF)

Mr. R. A. BUTLER said that a donation for technical education might be an admissible expense for income tax and profits tax purposes under s. 140 of the Income Tax Act, 1952, if the education was directly related to the donor's trade. Small annual subscriptions by a company which had direct business connections with the trust might also be admissible. Furthermore, effective relief from income tax might be obtainable for donations made under deed of covenant. [8th November.

ESTATE DUTY OFFICE

Mr. H. BROOKE said that the number of duty-paying estates dealt with for the first time in 1954–5 by the Estate Duty Office had been 69,539. The number of small estates on which no duty was payable had been 150,000. [9th November.

ROYAL COMMISSION ON CAPITAL PUNISHMENT (REPORT)

Major LLOYD-GEORGE made the following statement:—

"Her Majesty's Government have given further consideration to the Report of the Royal Commission on Capital Punishment in the light of the debate on 10th February last.

The Commission's recommendations may be divided into three main groups.

The first consists of the major recommendations that the age limit below which the sentence of death may not be imposed should be raised from eighteen to twenty-one; that in all other cases the jury should be given discretion to decide whether there are such extenuating circumstances as to justify substituting the sentence of imprisonment for life for the sentence of death; and that the test of criminal responsibility laid down (so far as concerns England and Wales) by the M'Naghten Rules should be abrogated. The Government, after full consideration, do not feel able to accept any of these three recommendations.

The second group consists of a number of other less important recommendations which could not be implemented without legislation. The Government do not see any prospect of legislation on this matter in the near future, and propose to defer a decision on these recommendations until an opportunity for legislation can be found.

The third group consists of recommendations to which effect can be given administratively. These have, in the main, been accepted and have been, or are being, put into effect. As regards England and Wales, I have, in particular, authorised the Prison Commissioners to proceed with the plans for a special institution for the detention and treatment of psychopaths and other prisoners who are mentally abnormal; and arrangements are now in force whereby persons charged with murder are seen by a psychiatrist from outside the prison service, as well as by a doctor or doctors from within that service, in any case where the prisoner's mental state is in doubt." [10th November.

LEGAL AID SCHEME

The ATTORNEY-GENERAL stated that a total grant of £1,552,225 had been voted for the Legal Aid Scheme in 1954–5. Subject to the Comptroller and Auditor-General's examination of the accounts it appeared that £1,275,000 had actually been applied for that purpose. Eighty-one per cent. of aided cases concluded in the year, and 78 per cent. of those granted legal aid in the year, related to matrimonial causes. Save for cases concluded by The Law Society's Divorce Department, matrimonial causes were not separately accounted for and it was not therefore possible to state the total cost attributable to matrimonial causes.

[10th November.

STATUTORY INSTRUMENTS

Coroners (Fees and Allowances) Rules, 1955. (S.I. 1955 No. 1668.) 5d.

Coroners Act, 1954 (Commencement) Order, 1955. (S.I. 1955 No. 1667 (C. 11).)

Fertilisers and Feeding Stuffs Regulations, 1955. (S.I. 1955 No. 1673.) 1s. 8d.

Import Duties (Exemptions) (No. 10) Order, 1955. (S.I. 1955 No. 1669.)

Road Vehicles (Excise) (Prescribed Particulars) Regulations, 1955. (S.I. 1955 No. 1665). 8d.

Road Vehicles (Index Marks) (Amendment) Regulations, 1955. (S.I. 1955 No. 1666.) 8d.

Road Vehicles (Registration and Licensing) Regulations, 1955. (S.I. 1955 No. 1664.) 1s. 2d.

Stopping up of Highways (Bedfordshire) (No. 1) Order, 1955. (S.I. 1955 No. 1672.)

Stopping up of Highways (Buckinghamshire) (No. 6) Order, 1955. (S.I. 1955 No. 1661.)

Stopping up of Highways (Plymouth) (No. 8) Order, 1955. (S.I. 1955 No. 1671.)

Superannuation (Local Government and Public Boards) Interchange (Scotland) Amendment Rules, 1955. (S.I. 1955 No. 1660 (S.139).) 8d.

Valuation Lists Rules, 1955. (S.I. 1955 No. 1680.) 8d.

Valuation Lists (Totals of Values) Regulations, 1955. (S.I. 1955 No. 1681.) 5d.

[Any of the above may be obtained from the Government Sales Department, The Solicitors' Law Stationery Society, Ltd., 21 Red Lion Street, W.C.1. The price in each case, unless otherwise stated, is 4d. post free.]

The Government of Northern Ireland have announced that a revised edition of the statutes in force in Northern Ireland, which will contain enactments passed by four different legislatures since 1226, is due for publication in the spring. The revised edition will consist of sixteen volumes. One volume will contain pre-1800 legislation (including that of the old Irish Parliament); seven will comprise United Kingdom legislation passed between 1801–1920; four will deal with United Kingdom legislation of the period 1921–1950, and the remaining four will contain the Acts passed by the Parliament of Northern Ireland during that period. Publication of the revised edition was recommended in 1947 by the Statute Law Committee for Northern Ireland, and the Ministry of Finance set up a Statute Law Revision Office to prepare the work, which is almost finished.

NOTES AND NEWS

Honours and Appointments

The Queen has been pleased to appoint Mr. CYRIL BARNET SALMON, Q.C., to be a Commissioner of Assize on the Wales and Chester Circuit (Cardiff).

Mr. THOMAS FOORD, senior assistant solicitor to Bournemouth Corporation, has been appointed deputy town clerk of Gloucester.

Mr. REGINALD I. BAINBRIDGE, legal assistant to Bootle Corporation, has been appointed assistant solicitor to the Montgomery County Council.

Miscellaneous

At the Royal Society of Arts, John Adam Street, Adelphi, London, W.C.2, on 30th November, at 2.30 p.m., a paper will be given on "Scientific Aspects of the Detection of Crime" by L. C. Nickolls, M.Sc., A.R.C.S., D.I.C., F.R.I.C., Director, Metropolitan Police Laboratory, which will be illustrated by lantern slides. Applications for tickets should be addressed to the secretary of the society.

Out of the twenty-four candidates at the Preliminary Examination held at The Law Society's Hall, Chancery Lane, London, W.C.2, on the 10th, 11th, 12th and 13th October, nine passed.

DEVELOPMENT PLANS

COUNTY COUNCIL OF DURHAM DEVELOPMENT PLAN

(*a*) Jarrow and Hebburn Town Map

(*b*) Jarrow Comprehensive Development Area Map

The above town map and comprehensive development area map, both of which are prepared as part of the above development plan, were on 7th November, 1955, submitted to the Minister of Housing and Local Government for approval. The town map comprises the whole of the Municipal Borough of Jarrow and the Urban District of Hebburn, and a small part of each of the Urban Districts of Boldon and Felling. The comprehensive development area map relates to land wholly within the Municipal Borough of Jarrow. Certified copies of the town map and of the comprehensive development area map as submitted for approval have been deposited for public inspection at the County Planning Office, 10 Church Street, Durham. Certified copies of the town map have also been deposited for public inspection at the following places:—

The Town Hall, Jarrow.

The Hebburn Urban District Council Offices, Argyle Street, Hebburn.

The Boldon Urban District Council Offices, Boldon.

The Felling Urban District Council Offices, Council Buildings, Felling.

A certified copy of the comprehensive development area map has also been deposited for public inspection at the Town Hall, Jarrow. The copies of the town map and of the comprehensive development area map so deposited are available for inspection free of charge by all persons interested at the places mentioned above during normal office hours.

Any objection or representation with reference to the town map or the comprehensive development area map may be sent in writing to the Secretary, Ministry of Housing and Local Government, Whitehall, London, S.W.1, before 31st December, 1955, and any such objection or representation should state the grounds on which it is made. Persons making an objection or representation may register their names and addresses with the Durham County Council at the office of the Clerk of the County Council, Shire Hall, Durham, and will then be entitled to receive notice of the eventual approval of the town map and of the comprehensive development area map.

Wills and Bequests

Mr. Walter James Creak, retired solicitor, of Wem, Salop, left £23,907 (£20,609 net).

Mr. Henry Freeman, solicitor, of Harrogate, left £192,421 (£190,089 net).

OBITUARY

MR. S. FOOT

Mr. Stanley Foot, retired solicitor, of Plymouth, died on 10th November, aged 71. He was admitted in 1911.

MR. W. FULLER

Mr. William Fuller, solicitor, of Chancery Lane, London, W.C.2, and Great Missenden, died on 31st October, aged 70. He was admitted in 1916.

MR. W. H. G. JEFFREYS

Mr. William Howell Godfrey Jeffreys, solicitor, of Neath, has died, aged 45. He was admitted in 1932 and was Under-Sheriff of Breconshire and Clerk to Ystradgynlais Rural Council.

SOCIETIES

The annual general meeting of the SOLICITORS' BENEVOLENT ASSOCIATION was held on 2nd November at 60 Carey Street, London, W.C.2. The chairman, the Right Honourable the Lord Morris, who presided, welcomed the President of The Law Society and thanked him for the interest and support which he was giving to the work of the association. In presenting the annual report and accounts, the chairman referred to the number of new members admitted during the year, namely 346, and to the fact that the total membership had now reached the record figure of 8,002, which, however, was still a very small percentage of the total number of solicitors on the Roll who could and should be supporting their own professional benevolent fund. The relief granted during the year to 290 beneficiaries amounted to £31,974 12s. 10d. The association's income, if legacies were discounted, had again been overspent by some £4,000.

The chairman thanked The Law Society for its generous donation of one hundred guineas and also the Worshipful Company of Cutlers, the Worshipful Company of Solicitors of the City of London, and other benefactors, as well as the following provincial law societies which had made donations during the year: Bedfordshire, Berks, Bucks and Oxon, Birmingham, Blackpool and Fylde District, Bromley and District, Bury and District, Cambridgeshire and District, Cardiff and District, Chorley, Chester and North Wales, Cornwall, Croydon and District, Devon and Exeter, Dorset, Eastbourne, Gloucestershire and Wiltshire, Gravesend and District, Grimsby and Cleethorpes, Hampshire, Isle of Thanet, Isle of Wight, Kent, Leicester, Manchester, Mid-Essex, Monmouthshire, North Lonsdale, Northamptonshire, Scarborough, Somerset, Southend-on-Sea, Suffolk and North Essex, Tunbridge Wells, Tonbridge and District, Warrington, West Surrey, Worthing. The chairman also referred to the very generous gift of one thousand pounds which had been received from Sir Louis Sterling in commemoration of his 75th birthday, which the board had accepted with sincere gratitude.

The board of directors were re-elected, and the President thanked them for their services during the past year. A vote of thanks to the chairman for presiding at the meeting, and of appreciation for his efforts on behalf of the association during his year of office, was moved by Mr. F. L. Steward.

At the monthly meeting of the board of directors which followed, Mr. Beauchamp Stuart Pell, of London, was elected Chairman, and Mr. Cyril Highway, of Birmingham, Vice-Chairman, for the ensuing year. The sum of £3,045 19s. was distributed in relief to thirty-four beneficiaries, £270 of this being in the form of "special" grants.

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